154-438

RECORD, CASE No. 15,270.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., ~~1300~~. 900

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

VICTOR M. BACKUS, AS TREASURER OF MARION COUNTY, INDIANA, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED FEBRUARY 27, 1893.

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1 STATE OF INDIANA, *ss:*

Be it remembered that heretofore, to wit, on the 15th day of December, 1892, the same being the 16th judicial day of the November term, 1892, the Indianapolis and Vincennes Railroad Company, by Butler, Snow and Butler and Samuel O. Pickens, its attorneys, filed in the office of the clerk of the supreme court of the State of Indiana a transcript of the proceedings of the Marion superior court of said State and of the Marion circuit court of said State in a certain suit wherein said Indianapolis and Vincennes Railroad Company was plaintiff and Victor M. Backus, treasurer of Marion county, in said State, *et al.* were defendants, together with an assignment of errors endorsed thereon; which transcript and assignment of errors are in the words and figures following, to wit:

2 Be it remembered that among the records of proceedings had, papers filed, motions decided, rulings made, exceptions noted, judgments rendered, decrees entered, &c., in the circuit court of the county of Marion, State of Indiana, are the following in the cause of—

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS, Treasurer, &c., and Others. } No. 6220.

And be it also remembered that heretofore, to wit, on the 20th day of June, A. D. 1892, there was filed in the office of the clerk of said circuit court a transcript from room three of the superior court of Marion county, State of Indiana, in the words and figures following, viz:

3 Be it remembered that among the records of proceedings had, papers filed, motions decided, rulings made, exceptions noted, judgments rendered, decrees entered, &c., in the superior court of the county of Marion, State of Indiana, are the following in the cause of—

THE INDIANAPOLIS AND VINCENNES RAILWAY CO.
vs.
VICTOR M. BACKUS, Treasurer, and Others. } No. 43368.

And be it also remembered that heretofore, to wit, on the 19th day of April, A. D. 1892, the above-named plaintiff, by its attorneys, filed in the office of the clerk of said superior court its complaint as against the aforesaid defendants in the words and figures following—that is to say:

4 STATE OF INDIANA, } ss:
Marion County, }

In the Superior Court of Marion County, Room No. 3.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS, JOSEPH K. LITTLE, William F. Cassady, Sanders Hubbard, Tolbert H. Sudbury, John French, Jonathan Scott, George W. Donaldson, and F. H. Hoffman.

No. 43368. No. 6220.
In the Circuit Court of Marion County.

Bill of Complaint for Perpetual Injunction.

The Indianapolis and Vincennes Railroad Company, a corporation created and existing under and by virtue of the statutes of the State of Indiana, complains of Victor M. Backus, as treasurer of Marion county, Indiana; Joseph K. Little, as treasurer of Hendricks county, Indiana; William F. Cassady, as treasurer of Owen county, Indiana; Sanders Hubbard, as treasurer of Morgan county, Indiana; Tolbert H. Sudbury, as treasurer of Monroe county, Indiana; John French, as treasurer of Green county, Indiana; Jonathan Scott, as treasurer of Sullivan county, Indiana; George W. Donaldson, as treasurer of Knox county, Indiana, and F. H. Hoffman, whose full Christian name is to plaintiff unknown, as treasurer of the
5 city of Vincennes, in Knox county, Indiana, and avers that the plaintiff corporation is the owner of a line of railroad extending from the city of Indianapolis, Marion county, Indiana, to the city of Vincennes, Knox county, Indiana, extending through or into the said counties of Marion, Hendricks, Owen, Morgan, Monroe, Green, Sullivan, and Knox, in said State of Indiana; that plaintiff, as such corporation, owns certain rights of way, railroad tracks, lots, lands, personal property, machinery, and equipment in said several counties and cities hereinabove mentioned.

That by the act of the legislature of the State of Indiana, entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, the said corporate property of plaintiff is divided into four separate and distinct classes for the purpose of assessment, valuation, and taxation, to wit:

1. All personal property other than that denominated by said statute "railroad track" and "rolling stock," including tools and materials for repairs, fixtures, and stationary engines. Property of this class is by said statute required to be listed, assessed, and valued for taxation by the local assessing officers having local jurisdiction where said property may be situated, namely, township and county assessors and county boards of review.

2. All real estate of railroad corporations other than that denominated by said statute "railroad track" and "right of way," with all the improvements thereon, is by said statute required to be listed,

assessed, and valued for taxation as other lands, lots, and improvements are listed, assessed, and valued in the county,
6 township, town, or city where the same are located. This class of property is also by said statute required to be listed, assessed, and valued for taxation by the local assessing officers, namely, township and county assessors and county boards of review.

3. The rights of way, including superstructures, main, side, or second tracks and turnouts, turn-tables, telegraph poles, wires, instruments, and other appliances, and the stations and improvements of railroad corporations on their rights of way, excepting machinery, stationary engines, and other fixtures, are by said statute held to be real estate for the purpose of taxation and are designated "railroad track."

4. Operating equipment of railroad corporations, consisting of locomotives and tenders and passenger, freight, mail, express, and baggage cars and equipment and cars and equipment of all kinds used in the operation of railroads are by said statute held to be personal property and are designated, for the purpose of taxation, "rolling stock."

That by the provisions of said statute the owners of all real estate and personal property in the State of Indiana, excepting only railroad corporations as to their property denominated "railroad track" and "rolling stock," are granted the jurisdiction of township assessors, county assessors, and county boards of review in the matter of the assessment and valuation of their real estate and personal property for taxation; that the owners and representatives of all property subject to assessment and valuation for taxation by
7 the said local assessing officers are by said statute required to have notice of any proposed change in the listing, assessment, and valuation of their property for taxation either by the township assessor or the county board of review, and are by said statute granted a full hearing before either or all of said local assessing officers as to any change, addition to, or increase of the listing, assessment, and valuation of their property as made by said owners and representatives thereof; that in the event that the owners or representatives of any property subject to taxation in said State of Indiana, excepting only the property of railroad corporations denominated "railroad track" and "rolling stock," are dissatisfied with the assessment and valuation of their property by the said local assessing officers they are granted by said statute the right of appeal from the county boards of review to the State board of tax commissioners.

That as to the assessment and valuation for taxation of their two classes of corporate property denominated "railroad track" and "rolling stock" railroad corporations are denied the jurisdiction of township assessors, county assessors, and county boards of review, and are denied any right of appeal from the decisions of county boards of review to the State board of tax commissioners.

That by the provisions of said statute the corporate property of railroad corporations denominated "railroad track" and "rolling

stock" *are* singled out and separated from all other property of the State of Indiana for the purpose of assessment and valuation for taxation and *are*, under the provisions of said statute, assessed
8 and valued for taxation by a distinct, separate, discriminating, and unequal method of assessment and valuation from any and all other property subject to taxation in said State of Indiana.

That the separate, distinct, discriminating, and uniform method of assessment and valuation for taxation of the two classes of corporate property of railroad corporations denominated "railroad track" and "rolling stock," as provided and required by said statute, of necessity results in an ununiform and unequal rate of assessment and taxation of said two classes of the property of railroad corporations as compared with all other property subject to taxation in said State of Indiana.

That by the provisions of said statute no notice whatever is required to be given to any railroad corporation as to the time and place when and where its corporate property denominated "railroad track" and "rolling stock" will be assessed and valued for taxation. No right whatever is by said statute granted or reserved to railroad corporations to be heard regarding the final assessment and valuation of the said two classes of their corporate property; and the State board of tax commissioners is not, by said statute, required to hear railroad corporations regarding the assessment and valuation of the said two classes of their corporate property, even upon the voluntary application of said railroad corporations to be heard regarding the assessment and valuation of their "railroad track" and "rolling stock."

9 That by section 117 of said act of March 6, 1891, the governor, secretary of state, and auditor of state, together with two persons appointed by the governor, are constituted a board denominated the State board of tax commissioners; that by section 129 of said statute the said State board of tax commissioners is required to meet at the office of the auditor of state on the first Monday of August, each year, "for the purpose of assessing railroad property and equalizing the assessment of real estate;" that by section 137 of said statute the said State board of tax commissioners is required to assess the railroad property denominated "railroad track" and "rolling stock," the requirement being in the words following, to wit: "Said board shall also assess the railroad property denominated in this act as 'railroad track' and 'rolling stock' at its true cash value, and said board is hereby given the power and authority, by committee or otherwise, to examine persons or papers;" that by section 125 of said statute the State board of tax commissioners is required to hear and determine appeals from the decision of any county board of review, the requirement being in the words following, to wit: "Appeals shall lie from the decision of any county board of review to the State board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor."

That by the provisions of said statute the owners and representatives of all property subject to taxation, excepting only the owners and representatives of "railroad track" and "rolling stock," as to the assessment and valuation of their property for taxation are granted and have reserved to them the right of appeal from the final decision of the county boards of review to the State board of tax commissioners, and the right upon such an appeal to a full hearing before said State board of tax commissioners; but that railroad corporations, as to the assessment and valuation of their corporate property denominated "railroad track" and "rolling stock," are, by said statute, denied the jurisdiction of the local assessing officers, are deprived of the right of appeal to the State board of tax commissioners, are deprived of the right to have any notice given them of the time and place where and when their "railroad track" and "rolling stock" will be finally assessed and valued for taxation, and are denied the right to be heard before said State board of tax commissioners regarding the final assessment and valuation of their "railroad track" and "rolling stock," either with or without notice.

That the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation in the several counties through or into which its line of railroad extends for the year 1890, as made by the duly constituted authorities of the State of Indiana, is as follows:

Total in Marion county	$195,885 00
Total in Hendricks county	10,380 00
Total in Owen county	156,520 00
Total in Morgan county	172,190 00
Total in Monroe county	10,760 00
Total in Green county	195,885 00
Total in Sullivan county	12,565 00
Total in Knox county	179,560 00
Making the total amount of the entire valuation and assessment for the year 1890	$811,230 00

Which assessment and valuation, plaintiff avers, was and is a full assessment and valuation of the true cash value of the "railroad track" and "rolling stock" of plaintiff corporation.

That the true cash value of the "railroad track" and "rolling stock" of plaintiff corporation was no greater in the year 1891 than it was in the year 1890.

That said State board of tax commissioners, on or about September 8, 1891, made the following pretended assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation, to wit:

Total in Marion county	$248,448 00
Total in Hendricks county	35,283 00
Total in Owen county	523,606 00
Total in Morgan county	578,700 00

Total in Monroe county	$34,729 00
Total in Green county	646,345 00
Total in Sullivan county	34,840 00
Total in Knox county	582,540 00
Making a total pretended assessment and valuation	$2,684,491 00

That said pretended assessment and valuation so made by said State board of tax commissioners was not and is not the "true cash value" of the "railroad track" and "rolling stock" of plaintiff corporation, and does not truly and justly represent the true cash value thereof as measured either by its cost of construction, rights of way, and railroad tracks, lands, materials, equipment, and rolling stock of plaintiff corporation, or by the gross or net earnings of the railroad of plaintiff corporation, or by the market value or actual value of the stocks and bonds of plaintiff corporation; but, on the contrary, said pretended assessment and valuation is manifestly and grossly exorbitant, unjust, and inequitable, and does not represent the "true cash value" of the "railroad track" and "rolling stock" of plaintiff corporation, as required by the provisions of said act of March 6, 1891.

That in making said pretended assessment and valuation
13 of the "railroad track" and "rolling stock" of plaintiff corporation said State board of tax commissioners, regardless of its true cash value, imported and assigned to said property of plaintiff corporation large fictitious values by reason of the fact that the railroad of plaintiff corporation is under lease to the Pennsylvania company, a corporation organized and existing under and by virtue of the statutes of the State of Pennsylvania, and is operated in connection with the railway of the Pittsburg, Cincinnati, Chicago and St. Louis Railway Company, a corporation of the States of Pennsylvania, Ohio, Indiana, and Illinois, which importation and assignment to the property of plaintiff corporation of said fictitious values was and is without right, without authority of law, and in violation of the requirements of said statute requiring said State board of tax commissioners to assess and value the said property of plaintiff corporation at the true cash value thereof.

That in making said assessment and valuation for taxation of said two classes of the corporate property of plaintiff said State board of tax commissioners, as plaintiff is informed and believes and upon information and belief avers the fact to be, did not make any personal inspection or examination of said two classes of the property of plaintiff denominated "railroad track" and "rolling stock" for the purpose of ascertaining the true cash value thereof, as required by said statute, and did not summon before it or
examine under oath persons acquainted with said two
14 classes of property and competent to testify to the true cash value thereof, but, on the contrary, made said assessment and valuation without personal inspection or examination of experts or persons competent to assess and value said two classes of property

at the true cash value thereof; that said State board of tax commissioners did not give to plaintiff or to any officer, agent, or attorney of plaintiff any notice whatever of the assessment and valuation of said two classes of the property of plaintiff which it had made or which it had determined upon and intended to make, and did not give to plaintiff or to any officer, agent, or attorney of plaintiff any hearing or opportunity to be present or to be heard by said State board of tax commissioners against said assessment and valuation of said two classes of the property of plaintiff or for the correction of errors therein after said assessment and valuation was made or determined upon by said State board of tax commissioners, and that plaintiff did not know and had no means of knowing the amount of said assessment and valuation until after the final adjournment of said State board of tax commissioners, and had no notice of said assessment and valuation or opportunity to be heard against said assessment and valuation at any time before the said assessment and valuation was finally made by said State board of tax commissioners.

That the printed proceedings of said State board of tax commissioners for the year 1891 show that there are seventy-one railroad corporations having property in Indiana subject to taxation; that no assessments and valuations of railroad property were finally determined upon and made by said State board of tax commissioners prior to September 8, 1891, and that said State board of tax commissioners finally adjourned on September 11, 1891, that being the last day said board could remain in session under said statute, without giving plaintiff any notice whatever of its said assessment and valuation of plaintiff's property and without giving plaintiff any hearing or opportunity to be heard touching said assessment and valuation for taxation of said two classes of the corporate property of plaintiff.

That if it be true that said act of March 6, 1891, purports to grant power and authority to said State board of tax commissioners to add large, fictitious, and non-existing values to the "railroad track" and "rolling stock" of plaintiff corporation by reason of the fact that plaintiff's railroad is operated in connection with a line of railroad extending far beyond the boundary lines of the State of Indiana and engaged in large interstate commerce and transportation, then and in that case said statute is unconstitutional and void because it is an attempt upon the part of the legislature of Indiana to impose taxes upon property and values beyond the jurisdiction of and without and beyond the boundaries of said State of Indiana.

That the said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation so made by said State board of tax commissioners is unjust, unequal, unlawful, and void, and does not represent the "true cash value" thereof as required by said statute, and that said assessment and valuation consists very largely of fictitious and arbitrary values assigned to said two classes of the corporate property of plaintiff by reason solely of the fact that the railroad of plaintiff is operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago

and St. Louis Railway Company, which fictitious and arbitrary values so assigned to the property of plaintiff never existed in or pertained or belonged to said property of plaintiff, and do not constitute any part of the taxable value thereof, which taxable value is by said statute limited to the true cash value of said two classes of plaintiff's property.

That the wrongful, unequal, inequitable, and unlawful character of said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff is conclusively proven by a comparison of said assessment and valuation with the assessment and valuation made by said State board of tax commissioners of the "railroad track" and "rolling stock" of other corporations.

The aggregate assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation, as made by said State board of tax commissioners in September, 1891, is $21,011.00 per mile. Its gross earnings are $3,453.00 per mile. Its net earnings, after payment of its operating expenses, are only $516.00 per mile. Its capital-stock debt is $10,542.00 per mile. Its bonded debt is $23,326.00 per mile. The interest on its bonded debt is
17 $203,120.00 per annum. After applying its entire net earnings—$68,690.00—upon the annual interest on its bonded debt a deficit of $134,430.00 in interest charges alone remained unpaid.

The aggregate assessment and valuation of the "railroad track" and "rolling stock" of the Terre Haute and Indianapolis Railroad Company as made by said State board of tax commissioners is $36,549.00 per mile: its gross earnings are $10,231.00 per mile; its net earnings are $3,149.00 per mile; its capital-stock debt is $16,886.00 per mile; its bonded debt is $18,685.00 per mile. The interest on its bonded debt is $142,000.00 per annum. After payment of all interest on its bonded debt out of its net earnings a surplus of $228,765.00 of net earnings remained. It cannot be claimed that the assessment and valuation of these two railroads are equal, fair, just, and equitable or that they represent the true cash value of the two railroad properties. Here is one railroad property, the plaintiff's, which lacks $134,430.00 of earning enough to pay the interest on its bonded debt, without paying any dividends upon its capital stock, while the other railroad, the Terre Haute and Indianapolis railroad, earned a surplus of $228,765.00 after paying all operating expenses and all interest on its bonded debt, and yet the "railroad track" and "rolling stock" of plaintiff corporation is assessed and valued for taxation at nearly three-fifths of as much per mile as the "railroad track" and "rolling stock" of the Terre Haute and Indianapolis Railroad Company.

18 Again, the aggregate assessment and valuation of the "railroad track" and "rolling stock" of the Michigan Central Railroad Company is $35,469.00 per mile; its gross earnings are $9,004.00 per mile; its net earnings are $2,336.00 per mile; its capital-stock debt is $69,383.00 per mile; its bonded debt is $68,042.00 per mile. The Michigan Central Railroad Company, after paying all the interest on its bonded debt and the rental of all

its leased lines, paid dividends of five per cent. on all of its capital stock. Here, therefore, is a railroad having 42.40 miles in Indiana, all double-tracked, which is assessed and valued for taxation at only $35,469 per mile, while the railroad of plaintiff corporation, all single-tracked and earning enough only sufficient to pay one-third part of the interest on its bonded debt, is assessed at $21,011.00 per mile, or three-fifths of as much per mile as the "railroad track" and "rolling stock" of the Michigan Central Railroad Company. The assessment of the main track of the railroad of plaintiff corporation is $19,400.00 per mile, while the main track of the Michigan Central Railroad Company is only $18,000.00 per mile. It cannot be claimed in view of these comparisons that the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation as made by said State board of tax commissioners represents the true cash value thereof.

Again, comparing the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation at $21,011.00 per mile with the assessment and valuation of the "railroad
19 track" and "rolling stock" of the Terre Haute and Logansport Railroad Company at $15,454.00 per mile, it appears that the last-named road made net earnings of $803.25 per mile, or sufficient to pay all interest on its bonded debt and leave a surplus of some $30,000.00, and yet its "railroad track" and "rolling stock" is assessed and valued at less than three-fourths of the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation.

Again, comparing the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation, $21,011.00 per mile, and of its main track, at $19,400.00 per mile, with the assessment and valuation of the Evansville and Terre Haute Railroad Company, $24,081.00 per mile, and of its main track, at only $16,400.00 per mile, it appears that the last-named railroad made net earnings of $2,789.88 per mile—sufficient to pay all interest on its bonded debt, five per cent. dividends on its capital stock, and leave a surplus of $170,000.00, and yet its total assessment and valuation for taxation is only one-seventh more than that of the "railroad track" and "rolling stock" of plaintiff corporation, while its main track is assessed and valued at one-sixth less than the main track of plaintiff corporation.

That such gross inequalities and discriminations against plaintiff corporation could not have existed if said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff had been made to represent the "true cash value" thereof, as required by section 137 of said statute.

20 That plaintiff had no notice whatever of said assessment and valuation of its "railroad track" and "rolling stock" and of the gross inequalities and errors therein and the manifest discriminations against plaintiff thereby after said assessment and valuation was made by said State board of tax commissioners and before the final adjournment of the said board, and had no opportunity whatever to be heard by said board regarding the manifest

inequalities, discriminations, and errors in said assessment and valuation of the said property of plaintiff.

That the only opportunity plaintiff had to confer with said State board of tax commissioners regarding the assessment and valuation of plaintiff's property was the voluntary appearance of plaintiff, by its representative, before said State board of tax commissioners long before said State board of tax commissioners made or determined upon the assessment and valuation of plaintiff's property; that at said conference no notice, knowledge, or intimation was given to plaintiff's representative by said board of the assessment and valuation of plaintiff's property which said board purposed and intended to make; that in the absence of any notice or knowledge of the intended assessment and valuation of plaintiff's property plaintiff was deprived of the right and privilege of contesting said assessment and valuation and of protesting against the gross inequalities, errors, and discriminations therein contained, and all that plaintiff, by its representative, was permitted to do was simply to discuss before said board the proper methods by which to ascertain
21 and de-*rtime* the taxable value of the "railroad track" and "rolling stock" of plaintiff corporation; and plaintiff avers that it was denied any notice of the proposed assessment and valuation of plaintiff's property and of the amount thereof, and was denied any opportunity to be heard before said State board of tax commissioners regarding the said assessment and valuation of its property.

That the real estate and lands occupied by plaintiff corporation as its rights of way were assessed and valued by said State board of tax commissioners at a very much higher rate per acre than other real estate and lands along the line of plaintiff's railroad were assessed and valued for taxation, and at far more than the true cash value of said real estate.

That plaintiff is informed and believes and upon information avers the fact to be that the right of way for a new railroad parallel with and adjacent to plaintiff's railroad could be obtained and an entirely new railroad could be built and constructed thereon, with the best material, for less than the amount at which said State board of tax commissioners has assessed plaintiff's right of way and railroad track for taxation.

That before the commencement of this suit plaintiff, by its proper officer, paid or tendered in lawful money of the United States to the several county and city treasurers made defendants herein the full amount of taxes justly and equitably due and to become due upon the "railroad track" and "rolling stock" of plaintiff corporation
22 for the entire year 1891; that plaintiff paid to Victor M. Backus, treasurer of Marion county, $931.81; to Joseph K. Little, treasurer of Hendricks county, $162.97; to Sanders Hubbard, treasurer of Morgan county, $2,765.65; which sums were accepted by said county treasurers on account of taxes upon the "railroad track" and "rolling stock" of plaintiff for the entire year 1891; that plaintiff tendered in lawful money of the United States, made legal tender by the laws of the United States, to William F. Cassady,

treasurer of Owen county, the sum of $2,058.58; to Tolbert H. Sudbury, treasurer of Monroe county, $193.93; to John French, treasurer of Green county, $2,413.70; to Jonathan Scott, treasurer of Sullivan county, $154.63; to George W. Donaldson, treasurer of Knox county, $1,792.08; to F. H. Hoffman, treasurer of the city of Vincennes, $135.72; which said sums of money so tendered to said defendants were by them and each of them declined, refused, and not accepted; that said payments and tenders hereinabove mentioned were made and tendered on the 28th, 29th, 30th, and 31st days of March, 1891.

That on the same days plaintiff paid or tendered in lawful money of the United States to the several county and city treasurers made defendants herein the full amount of taxes assessed against the personal property, improvements, lots, and lands of plaintiff other than "railroad track" and "rolling stock" for the entire year 1891, as follows, namely:

23 Plaintiff paid to Victor M. Backus, treasurer of Marion county, $30.47; to Sanders Hubbard, treasurer of Morgan county, $52.51; to John French, treasurer of Green county, $52.61; to George W. Donaldson, treasurer of Knox county, $102.94; to F. H. Hoffman, treasurer of the city of Vincennes, $110.58; which said sums of money were accepted and received by said defendants as such county and city treasurers; that plaintiff tendered, in lawful money of the United States, made legal tender by the laws of the United States, to William F. Cassady, treasurer of Owen county, the sum of $77.37, being the full amount of taxes assessed against the personal property, improvements, lots, and lands of plaintiff in said county of Owen, other than "railroad track" and "rolling stock," for the year 1891, which said sum of $77.37 was declined, refused, and not accepted by said treasurer of Owen county.

Plaintiff further avers that the said action of said State board of tax commissioners in making the said assessment and valuation for taxation of the said two classes of plaintiff's property denominated "railroad track" and "rolling stock," and in assessing said taxes against said two classes of the property of plaintiff, as hereinbefore set forth, was and is without right, without authority of law, without due process of law, unconstitutional, and void, for the following reasons:

First. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the assessment, valuation, and

24 taxation of the two classes of property denominated "railroad track" and "rolling stock" and purporting to confer jurisdiction and authority upon said State board of tax commissioners to make original and final assessment and valuation of said two classes of plaintiff's property are unconstitutional and void because they are in conflict with article 1, sections 12 and 23, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that plaintiff, as to the assessment and valuation for taxation of the said two classes of its property, is denied the jurisdiction of the township assessors, county assessors, and county boards of review of the

several counties in which its property is situated and through or into which its line of railway extends, and is deprived of the right of appeal from said county boards of review to the said State board of tax commissioners as an appellate tribunal in which plaintiff could compel a hearing in its behalf for the protection of its rights and property, which jurisdiction and right of appeal are valued and valuable privileges and immunities granted by said statute to all other tax-payers, property-holders, and citizens of said State, excepting only railroad corporations.

Second. Because said act of March 6, 1891, in so far as it relates to the assessment, valuation, and taxation of the two classes of property denominated "railroad track" and "rolling stock"
25 of railroad corporations, and in so far as it purports to confer jurisdiction and authority upon said State board of tax commissioners to make original and final valuation and assessment for taxation of said two classes of the corporate property of plaintiff, is unconstitutional and void, because it is in conflict with article 1, section 12, of the constitution of the State of Indiana and with the fifth amendment and section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that no provision whateser is made by said statute requiring any notice whatever to be given to the plaintiff by said State board of tax commissioners of any action taken by or in contemplation to be taken by said State board of tax commissioners touching the valuation, assessment, and taxation of the said two classes of the property of plaintiff, to the end that the plaintiff might be present or be represented in defense of its rights and property against the said valuation, assessment, and taxation made by said State board of tax commissioners, and because said statute does not provide for or reserve to plaintiff any right to any hearing before said State board of tax commissioners and utterly fails to require said State board of tax commissioners to hear plaintiff regarding the valuation, assessment, and taxation of the said two classes of the property of plaintiff, either with or without notice.

Third. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the listing, valuation, assessment,
26 and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and valuation for taxation of said two classes of the corporate property of plaintiff are unconstitutional and void because they are in conflict with article 10, section 1, of the constitution of the State of Indiana, in this, to wit, that the said two classes of the corporate property of plaintiff are not, and under the provisions and requirements of said statute cannot be, listed, valued, assessed, and taxed at a uniform and equal rate of valuation, assessment, and taxation with other real estate and personal property in said State of Indiana, but, on the contrary, are listed, valued, assessed, and taxed—and by the provisions and requirements of said statute are required to be listed, valued, assessed, and taxed—by a distinct,

separate, different, and discriminating method from and at an uniform and unequal rate of valuation, assessment, and taxation with other real estate and personal property in said State of Indiana.

Fourth. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the listing, valuation, assessment, and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make said original and final assess-
27 ment and valuation for taxation of said two classes of the corporate property of plaintiff are unconstitutional and void because they are in conflict with article 4, section 22, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that said sections, clauses, and provisions of said statute constitute a special law for the listing, valuation, assessment, and taxation of said two classes of the corporate property of railroad corporations, other and different from the general law providing for the listing, valuation, assessment, and taxation of other real estate and personal property in said State of Indiana, unjustly discriminating against plaintiff and other railroad corporations and increasing the burden of taxation upon said two classes of the property of plaintiff far beyond the burden imposed upon other real estate and personal property in said State of Indiana of equal cash value with said two classes of the corporate property of plaintiff.

Fifth. Because the sections, clauses, and provisions of said act of March 6, 1891, relative to the listing, valuation, assessment, and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and valuation for taxation of said two classes of the corporate
28 property of plaintiff are unconstitutional and void because they are in conflict with article 1, sections 12 and 23, and article 10, section 1, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that said sections, clauses, and provisions of said statute provide, require, and result in an unjust, unequal, and discriminating valuation, assessment, and taxation of said two classes of property belonging to railroad corporations, as compared with other real estate and personal property in said State of Indiana, whereby the privileges and immunities of plaintiff corporation and other railroad corporations, as citizens of the United States, engaged in State and interstate commerce are abridged, their property is taken without due process of law, and they are denied the equal protection of the laws in the manner following, namely, that said State board of tax commissioners, in making the said assessment and valuation for taxation of said two classes of the corporate property of plaintiff, did not limit its consideration to the true cash value of said two classes of the property of plaintiff, and did not make said assessment and valuation as measured by the

true cash value of the said two classes of the property of plaintiff, but, on the contrary, imported and arbitrarily assigned to said two classes of the property of plaintiff a very large increase of value wholly and solely by reason of the fact that the railroad of plaintiff corpo-
29 ration, which is situated wholly in the State of Indiana, is operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, a corporation of the States of Pennsylvania, Ohio, Indiana, and Illinois, engaged in large interstate traffic and transportation; that said fictitious and arbitrary values so imported and assigned to said two classes of the property of plaintiff by reason of the fact that plaintiff's railroad is operated in connection with said other railway above mentioned has resulted in the double taxation, to a large degree, of said two classes of the corporate property of plaintiff, and has become and is an unjust, inequitable, and unlawful burden imposed upon the corporate property of plaintiff; that said method of assessment and valuation so used by said State board of tax commissioners was and is an unjust, unequal, and illegal method of assessment and valuation of the said two classes of property of plaintiff corporation, and that said assessment and valuation does not represent the "true cash value" of said two classes of the property of plaintiff, as is required by the provisions of said statute.

Sixth. Because the sections, clauses, and provisions of the said act of March 6, 1891, providing for the creation of said State board of tax commissioners and defining the powers, rights, and duties of said board, in so far as they relate to the valuation and assessment of property for taxation, are unconstitutional and void be-
30 cause judicial powers, duties, and functions are granted to and enjoined upon said board, three members of which are the three chief executive officers of the State; said sections, clauses, and provisions of said act are therefore in conflict with article 3, section 1, of the constitution of Indiana.

Seventh. Because the sections, clauses, and provisions of the said act of March 6, 1891, creating said State board of tax commissioners, providing how and of whom said board shall be constituted, and defining the powers, functions, and duties of said board, are unconstitutional and void, first, because it is attempted to create two additional State executive and administrative offices and fill the two offices so created continuously and indefinitely with persons appointed by the governor, thus attempting to make the incumbents of said two offices continuously appointive and not elective, whereas all executive and administrative State officers must be elected by the people; and, second, because not only executive and administrative powers, functions, and duties are given to and enjoined upon said two appointive State officers, but judicial powers, functions, and duties are also given to and enjoined upon them, whereas all judicial offices must be filled by election by the people.

Plaintiff further alleges that in each of said counties, cities, and towns of which the defendants are respectively county, city, and town treasurers and tax collectors taxes amounting to a much
31 larger amount than the amounts so tendered or paid have

been pretended to be assessed against the plaintiff upon the valuations so wrongfully, unjustly, and unlawfully placed upon said property of plaintiff, and that said pretended taxes have been extended upon the respective tax duplicates in the said respective counties, cities, and towns, and that such tax duplicates are now in the hands of each of the defendants as such treasurers and tax collectors aforesaid, and that each of the defendants, as such treasurers and tax collectors aforesaid, are claiming and asserting that said several sums so extended upon said tax duplicates are delinquent taxes against plaintiff and its property under the provisions of said act of March 6, 1891, and that each of said defendants, in their official capacities, are threatening and intend to and will, in supposed compliance with the requirements of the provisions of said act of March 6, 1891, on that subject, levy on the said property of the plaintiff and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent if not enjoined from so doing, and that each of the defendants as such treasurer and tax collector is threatening to collect such wrongful, unjust, illegal, and void taxes by levy on the property of the plaintiff, to the great and irreparable injury of the plaintiff.

That notwithstanding said payments and tenders of payments of the taxes justly and equitably due from plaintiff upon its "railroad track" and "rolling stock" for the year 1891, as hereinbefore
32 set forth, the said defendants and each of them, as treasurers of the several counties and cities through or into which the railroad of plaintiff extends, are claiming and asserting the right to enforce the payment of the entire taxes as extended upon their duplicates upon the said wrongful, unjust, unlawful, and void assessment and valuation of the "railroad track" and "rolling stock" of plaintiff made by said State board of tax commissioners and will, unless restrained and enjoined by decree of court, attempt to enforce payment of said wrongful, unjust, unlawful, and void taxes by distraint and sale of the property of plaintiff.

That said wrongful, unjust, inequitable, and unlawful taxes extended and entered upon said unjust, unlawful, and void assessment and valuation made by said State board of tax commissioners constitutes and *is* a cloud upon the title to the said property of plainiff, which a court of equity has full power and jurisdiction to remove by its decree.

That plaintiff has united in this suit as defendants herein the several county and city treasurers of the several counties and cities through or into which the railroad of plaintiff extends, to the end that a multiplicity of suits may be avoided and to the end that a complete determination and settlement of the rights and questions involved may be had and made into one litigation.

That the said assessment and valuation for taxation of the "railroad track" and "rolling stock" of plaintiff made by said
33 State board of tax commissioners is a single unit assessment and valuation of the entire "railroad track" and "rolling stock" of plaintiff corporation, regardless of the limits of the counties, townships, and cities through or into which the line of plain-

tiff's railroad extends, and that therefore a single suit to enjoin the collection of all taxes wrongfully, unjustly, and unlawfully extended upon the tax duplicates upon and by reason of said wrongful, inequitable, and unlawful assessment and valuation is within the jurisdiction of and properly cognizable by a court of equity.

That plaintiff here now brings into court, in lawful money of the United States, the several sums and amounts tendered to and refused by the several defendants hereinbefore specifically mentioned and keeps its said tender to said defendants good.

By reason of the facts and averments hereinbefore set forth plaintiff prays that upon final hearing hereof it be adjudged and decreed that the said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff made by the said State board of tax commissioners at its session in the year 1891 is exorbitant, inequitable, unlawful, and wholly void; that the cloud placed upon the title of plaintiff's corporate property by reason of said wrongful, inequitable, and unlawful assessment and valuation made by said State board of tax commissioners be removed; that the said defendants, as such county and city treasurers as aforesaid, and each and every of them, and all persons, officers, deputies,
34 and agents acting by, through, or under the authority of any or either of said defendants, be perpetually enjoined and restrained from collecting or in any manner attempting to collect any other or further part of the said taxes extended and entered upon the several tax duplicates now in the official custody of said several defendants, other than or in addition to the said sums and amounts of money paid and tendered by plaintiff to said several defendants as and for the taxes justly, equitably, and lawfully due from plaintiff upon its corporate property for the year 1891, as hereinbefore mentioned, set forth, and averred; and the plaintiff further prays the court to grant a temporary injunction herein pending this cause, and plaintiff prays for any and all other proper relief.

BUTLER, SNOW & BUTLER,
S. O. PICKENS,
Attorneys for Plaintiff.

35 In the Marion Circuit Court.

INDIANAPOLIS & VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*
} No. 43368.

Samuel O. Pickens, being duly sworn, on his oath says that he is one of plaintiff's counsel in the above-entitled cause and, as such, authorized to make this affidavit; and affiant says he has read the complaint in said cause, hereto attached, and that as to all facts therein alleged of which he has personal knowledge he says they are true in substance as therein stated, and that he is informed and believes that all other facts in said complaint alleged are true, and

upon such information and belief he says they are true in substance as therein stated.

And affiant further says that the said defendants, as treasurers and tax collectors in said several counties, cities, and towns through and into which plaintiff's line of railway extends, claim and assert that large sums of money—the exact amounts of which affiant is unable to state, but said sums are largely in excess of the several amounts tendered by plaintiff to said several defendants as and for taxes against plaintiff's said property, as in the complaint alleged—are due said several counties, cities, and towns and the State of Indiana as taxes on said property, and claim and assert that said several sums so claimed to be due are delinquent taxes against plaintiff and its property under the provisions of said act of
36 March 6, 1891, and said several defendants, in *in* their official capacities, intend to and, in supposed compliance with the requirements of the provisions of said act of March, 1891, on that subject, as affiant believes, will levy on the said property of plaintiff and will proceed to distrain and sell the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing.

And affiant further says that as evidence of the purpose and intention of said defendant county treasurers to distrain and sell plaintiff's property to pay and satisfy said sums so claimed to be due and delinquent the Hon. A. G. Smith, attorney general of the State of Indiana, who is conducting the defense in said cause, announced to the court, while this cause was being considered on the 14th day of June, 1892, that he represented all the counties interested in said suit, and when the court announced that the final hearing of the cause would be postponed until October, 1892, the said Smith, threatening, said in substance that by that time the taxes would be collected by the treasurers.

And affiant further says that plaintiff and its counsel have in good faith desired and endeavored to have a hearing of said cause before the adjournment of the courts for the summer vacation and were ready for such hearing on the 14th inst., that being the date the superior court had fixed for the hearing of said cause.

SAMUEL O. PICKENS.

STATE OF INDIANA, } *ss:*
Marion County, }

Subscribed and sworn to this 18 day of June, 1892, before me—
JOHN R. WILSON, *Clerk.*

Subscribed and sworn to before me this 25th day of June, 1892.
JOHN R. WILSON, *Clerk.*

37 And afterwards, to wit, on the said 19th day of April, 1892, being the judicial day of the April term, 1892, of the general term of said superior court for the month of April, 1892, before the Honorable Lewis C. Walker, Napoleon B. Taylor, and James W.

Harper, judges thereof, the following proceedings *was* had herein, viz:

"Ordered by the court that cause numbered 43368 be assigned to room three (3) for trial."

And afterwards, to wit, on the said 19th day of April, 1892, there were issued from the office of the clerk of the said superior court writs of summons in this cause, directed to the sheriffs respectively of the several counties in which the said defendants separately reside; which said writs were afterwards, to wit, in due time, returned to the said clerk's office with the said sheriffs' endorsements thereon.

And afterwards, to wit, on the 10th day of May, 1892, being the 8th judicial day of the special term of said superior court for
38 the month of May, 1892, before the Honorable Lewis C. Walker, judge presiding, in said room three (3), the following proceedings were had herein, viz:

"Comes now George W. Donaldson, treasurer of Knox county, Indiana; Jonathan Scott, treasurer of Sullivan county, Indiana; John French, treasurer of Greene county, Indiana; Landers Hubbard, treasurer of Morgan county, Indiana, and W. F. Cassaday, treasurer of Owen county, Indiana, defendants in this cause, by their respective counsel, and each enters his special appearance herein and files his separate plea in abatement to the complaint of the plaintiff in the cause.

And comes also Frank W. Hoffman, treasurer of the city of Vincennes, Indiana, by counsel, and enters a special appearance herein and also files his separate plea in abatement to the complaint of the plaintiff filed in this cause, said plea in abatement being in the words and figures following—that is to say:"

39 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs. }
VICTOR M. BACKUS *et al.* }

The defendant George W. Donaldson, one of the defendants in the above-entitled cause, for the purpose of entering a special appearance and a separate plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Knox county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Knox county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all

taxes appearing thereon; that the only tax against plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking or threatening nor intending to levy or collect any part of said tax from any property outside of said county of Knox.

40 Wherefore he prays that said cause as to him for said reasons abate.

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STATE OF INDIANA, } ss:
County of Knox, }

George W. Donaldson, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) GEORGE W. DONALDSON.

Subscribed and sworn to before me this 5th day of May, 1892.

(Signed) A. M. YELTON,
Clerk K. C. C.

41 STATE OF INDIANA, }
Marion County. }

Superior Court, May Term, 1892.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY }
vs.
VICTOR M. BACKUS *et al.* }

The defendant Jonathan Scott, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in Marion county, in the superior court thereof, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Sullivan county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Sullivan county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and that it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Sullivan.

42 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) A. G. SMITH, *Att'y Gen'l.*
BEASLEY & WILLIAMS,
Attorneys for Defendant Scott.

STATE OF INDIANA, } ss:
Sullivan County, }

Jonathan Scott, being duly sworn, upon his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JONATHAN SCOTT.

Subscribed and sworn to before me this 3d day of May, 1892.

[SEAL.] (Signed) ARISTO S. WILLIAMS,
Notary Public.

43 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs.
VICTOR M. BACKUS *et al.* }

The defendant John French, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Greene county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Greene county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Greene.

44 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) CAVINS & CAVINS,
Att'ys for Def't French.

STATE OF INDIANA, } ss:
County of Greene, }

John French, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JOHN FRENCH.

Subscribed and sworn to before me this 3rd day of May, 1892.

(Signed) FRANKLIN RAMSEY,
[SEAL.] *Clerk Circuit Court.*

45 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs.
VICTOR M. BACKUS *et al.* }

The defendant Sanders Hubbard, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Morgan county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Morgan county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Morgan.

46 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) SANDERS HUBBARD.

STATE OF INDIANA, } ss:
County of Morgan, }

Sanders Hubbard, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) SANDERS HUBBARD,
Treas. M. C.

Subscribed and sworn to before me this 6th day of May, 1892.

[SEAL.] (Signed) R. C. GRIFFITH,
Clerk Morgan C't C't.

47 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs.
VICTOR M. BACKUS *et al.* }

The defendant Frank H. Hoffman, one of the defendants in the above-entitled cause, for the purpose of entering a special and a sep-

arate plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Knox county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of the city of Vincennes, in the county of Knox, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said city of Vincennes and county of Knox.

48 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) FRANK H. HOFFMAN,
By JOHN T. GOODMAN,
City Att'y of Vincennes, Indiana.

STATE OF INDIANA, }
County of Knox, } *ss:*

Frank H. Hoffman, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) F. H. HOFFMAN,
City Treas.

Subscribed and sworn to before me this 7th day of May, 1892.
Witness my hand and official seal.

(Signed) A. M. YELTON,
Clerk Knox Circuit Court. [SEAL.]

49 And afterwards, to wit, on the 14th day of May, 1892, being the 12th judicial day of the May term, 1892, of the said court, before the same honorable judge, the following proceedings was had herein, viz:

"On plaintiff's motion, the defendants who have not answered the said plaintiff's complaint herein are now ruled by the court to answer the same by the 28th day of May, 1892."

And afterwards, to wit, on the 24th day of May, 1892, being the 20th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings was had herein—that is to say:

"Comes now Tolbert H. Sudbury, treasurer of Monroe county, Indiana, defendant herein, by counsel, and files his plea in abatement in this cause in the words and figures following—that is to say:"

50 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court, February Term, 1892.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs. }
VICTOR M. BACKUS *et al.* }

The defendant Tolbert H. Sudbury, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Monroe county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Monroe county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Monroe.

51 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) TOLBERT H. SUDBURY.

STATE OF INDIANA, } ss:
County of Marion, }

Tolbert H. Sudbury, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) TOLBERT H. SUDBURY.

Subscribed and sworn to before me this 23rd day of May, 1892.

(Signed) ANDREW M. SWEENEY,
[SEAL.] *Clerk Supreme Court.*

52 And afterwards, to wit, on the 13th day of June, 1892, being the 7th judicial day of the June term, 1892, of said court, before the same honorable judge, the following proceeding was had herein:

Comes now Joseph K. Little, a defendant in this cause and treasurer of Hendricks county, Indiana, by counsel, and files his plea in abatement herein as follows, to wit:

53 STATE OF INDIANA, } ss:
Marion County, }

In the Superior Court of Marion County, May Term, 1892.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY }
vs. }
VICTOR M. BACKUS *et al.* }

The defendant Joseph K. Little, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Hendricks county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Hendricks county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking or threatening nor intending to levy or collect any part of said tax from any property outside of said county of Hendricks.

54 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) JOSEPH K. LITTLE,
By COFER & HADLEY,
His Attorneys.

STATE OF INDIANA, } ss:
County of Hendricks, }

Joseph K. Little, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JOSEPH K. LITTLE

Subscribed and sworn to before me this 9th day of June, 1892.

(Signed) CASSIUS C. HADLEY,
Notary Public.

55 And afterwards, to wit, on the 16th day of June, 1892, being the 10th judicial day of the June term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

Now comes the defendant William F. Cassady, by counsel, and files his verified motion for a change of the venue in this cause from the judges of the superior court of Marion county, Indiana, in these words and figures:

STATE OF INDIANA, } ss:
Marion County, }

THE INDIANAPOLIS AND VINCENNES RAILROAD CO.
vs.
VICTOR M. BACKUS, JOSEPH K. LITTLE, William F. Cassady, Sanders Hubbard, Tolbert H. Sudbury, John French, Jonathan Scott, George W. Donaldson, Frank H. Hoffman.

No. 4368. Superior Court. Motion for Change of Venue.

56 William F. Cassady, being duly sworn, says that he is one of the defendants in foregoing-entitled cause, and that the said defendants, including himself, cannot have a fair and impartial trial of said cause before either or all of the judges of the superior court of Marion county, Indiana, to wit, the Honorable Napoleon B. Taylor, Lewis C. Walker, and James W. Harper, on account of the bias and prejudice of each and every of said judges against these defendants, which bias and prejudice this defendant says exists, as he is informed and verily believes.

WILLIAM F. CASSADY.

Subscribed and sworn to before me on the 15th day of June, 1892.

W. S. JOHNSON,
Clerk Circuit Court of Owen County, Ind.

"And the court, being fully advised in the premises, grants the said change of venue and directs that the cause be transferred to the circuit court of Marion county, Indiana, and that said de-
57 fendant shall pay the costs of said change within ten (10) days, and the clerk of this court is ordered, upon the payment of the said costs within the time limited, to transmit all of the original papers on file herein, with a certified transcript of all the proceedings had in this court in said cause, to the circuit court as aforesaid.

LEWIS C. WALKER, *Judge.*"

"And before the granting of the said change of venue, but after the filing of the application therefor, the plaintiff moved the court to strike said verified motion and application from the files, and the court, having heard argument upon said motion and being fully advised in the premises, now overrules said motion; to which ruling the plaintiff at the time excepted, and nine (9) days were given to prepare and present its bill of exceptions herein."

And afterwards, to wit, on the 18th day of June, 1892, the following proceedings were had herein, viz:

"Comes now the plaintiff and files its bill of exceptions in this cause as follows, viz:

58 In the Marion Superior Court, Room No. 3.

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.* } No. 43368.

Bill of Exceptions.

Be it remembered that on the 16th day of June, 1892, the same being the 10th day of the June, 1892, term of said court, the following plea and proceedings were had in said cause before the Hon. Lewis C. Walker, judge of said court:

William F. Cassady, one of the defendants herein, who, on the 10th day of May, 1892, appeared specially herein, by counsel, for the purpose of filing a plea to the jurisdiction of this court, which plea was duly filed herein and is in the words and figures following, to wit (here insert), and who had not appeared herein otherwise than by such special appearance, filed herein, by counsel, his affidavit for a change of venue from the Hon. Lewis C. Walker, and also from the other two judges of said court, on the ground of the bias and prejudice of the said Hon. Lewis C. Walker, and also of the other two judges of this court, against the defendant Cassady; which said affidavit was in the words and figures following (here insert):

59 And thereupon the plaintiff, by its counsel, moved that said affidavit be stricken from the files on the following grounds, to wit:

1. The defendant Cassady is in court only under a special appearance for the purpose of contesting the jurisdiction of this court upon a claim, which implies that this court could not obtain jurisdiction over him even by his voluntary general appearance herein.

2. Because it is too late for a motion to change the venue under rule 21 of the Marion superior court.

3. Because the defendant Cassady, being one of several defendants, has not the right to have the venue changed by reason of any bias or prejudice of the judges of said court against the defendant Thomas.

And the court, having heard the parties by their respective counsel and being sufficiently advised in the premises, overruled said motion of plaintiff that said affidavit be stricken from the files; to which ruling the plaintiff at the time excepted, and the court thereupon granted the affidavit and application of defendant Cassady for a change of venue and ordered that the venue of this cause be changed to the Marion circuit court; to which ruling and order of the court the plaintiff at the time excepted.

And the court thereupon granted to plaintiff nine days in which to file its bill of exceptions.

And now, on this 17th day of June, 1892, being within the time limited for filing a bill of exceptions herein, the plaintiff presents this its bill of exceptions and prays that the same may be signed and sealed and be made a part of the record in this cause.

LEWIS C. WALKER, *Judge.*

60 "And now the plaintiff files its demurrer to the several answers of the defendants who have filed pleas in abatement herein; said demurrer is in the words and figures following:"

61 In the Marion Superior Court, Room No. 3.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY *vs.* VICTOR M. BACKUS *et al.* } No. 43368. Demurrer.

Comes now the plaintiff and demurs separately and severally to the separate and several answers of the defendants hereinafter names, to wit, William F. Cassady, Sanders Hubbard, Tolbert H. Sudbury, John French, Jonathan Scott, George W. Donaldson, and Frank H. Hoffman, and for ground of such demurrer alleges that:

1. Said separate and several answers do not nor does any of them state facts sufficient to constitute a cause of abatement of plaintiff's complaint.

2. Said separate and several answers do not nor does any of them state facts sufficient to constitute a cause of defense to plaintiff's complaint.

BUTLER, SNOW & BUTLER,
Att'ys for Plaintiff.

62 STATE OF INDIANA, *County of Marion,* } *ss:*

I, John R. Wilson, clerk of the superior court within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the entries of proceedings had in said court in this cause, numbered 43368, as appear from the records thereof now in my custody and keeping.

And I further certify that I now transmit and transfer all of the original papers belonging to the said cause now on file in my office.

In testimony whereof I hereunto subscribe my name and [SEAL.] affix the seal of said superior court, at my office, in the city of Indianapolis, the 18th day of June, A. D. 1892.

JOHN R. WILSON, *Clerk.*

63 And afterwards, to wit, on the 24th day of June, 1892, being the 47th judicial day of the May term, 1892, of the Marion county circuit court, of Marion county, Indiana, before the Honorable Edgar A. Brown, sole judge thereof, the following proceedings were had herein, viz:

"Come now the parties, by counsel, and the court, being sufficiently advised in the premises, sustains the demurrer of the plaintiff to each and all of the separate and several pleas in abatement filed herein; to which ruling of the court each of the defendants so answering at the time excepts."

And afterwards, to wit, on the 25th day of June, 1892, being the 48th judicial day of the May term, 1892, of said court, before the same lion. judge, the following proceedings were had herein, viz:

"Comes now the defendant herein, Joseph K. Little, treasurer of the county of Hendricks, State of Indiana, by counsel, and, appearing especially, files his answer to the jurisdiction of the court as follows:

64 STATE OF INDIANA, } *Marion County.* }

In the Marion Circuit Court.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY } *vs.* VICTOR M. BACKUS *et al.* } No. 6220.

Answer Denying the Jurisdiction of the Court, &c.

Comes now the defendant Joseph K. Little, as treasurer of Hendricks county, Indiana, and, appearing specially and pleading to the jurisdiction of the court over his person, says that this court has no jurisdiction over his person; that he is a resident of the State of Indiana, but is not now and never was a resident of Marion county, Indiana; that he is a resident on Hendricks county, Indiana, and was at the time of the filing of the complaint herein and — ever since and — now the duly elected, qualified, and acting treasurer of Hendricks county, Indiana, and that the aforesaid action was brought against him in his official capacity and character. As treasurer of said county of Hendricks he has in his possession the tax duplicate of his said county, and it is his official duty to collect all taxes appearing thereon, and the only tax against the plaintiff which he is seeking or threatening to collect is the tax appearing upon said duplicate against said plaintiff which is now delinquent; that he is attempting to collect no other taxes from the plaintiff except such as now appear upon the said tax duplicate.

Wherefore he says this court has no jurisdiction over his person.

CLAYPOOL & CLAYPOOL,
Att'ys for said Def't.

65 STATE OF INDIANA, } *Marion County,* } *ss:*

Solomon Claypool on his oath states that he has read over and knows the contents of the foregoing answer and is informed and believes that the same is true.

(Signed) SOLOMON CLAYPOOL.

Subscribed and sworn to this 25th day of June, 1892.

(Signed) BERTHA E. WILLIAMS,
[SEAL.] *Notary Public.*

And the plaintiff now files its demurrer to the said answer of the defendant Joseph K. Little herein in the words and figures following, viz:

66 In the Marion Circuit Court.

INDIANAPOLIS AND VINCENNES RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
} No. 6220. Demurrer.

The plaintiff demurs to the answer of the defendant Joseph K. Little on the ground that said answer does not state facts sufficient to constitute a cause of abatement to this action or to constitute a defense to this action.

(Signed) BUTLER, SNOW & BUTLER,
S. O. PICKENS, *Att'ys for Plaintiff.*

"And, being fully advised in the premises, the court does now sustain the said demurrer to said answer; to which ruling said defendant excepts, and now the said defendant, Little, is ruled to answer over."

67 And the plaintiff now, leave of the court being first had, appends to its complaint a verification thereof, and the plaintiff now moves the court for a temporary injunction against each and all of the said defendants herein and files proof of notice given to said defendants of its intention to file such motion for a temporary injunction.

And the plaintiff also now tenders its bond conditioned for the payment of all damages and costs which might accrue by reason of such temporary injunction, and, the defendants objecting to the sufficiency of said bond, the court does not approve the same and requires a showing as to the sufficiency of the security thereon; and the defendant-, in opposition to said motion for a temporary injunction, file the affidavits of Claude Matthews, John O. Henderson, and Ivan W. Walker, and the plaintiff now moves the court to reject and strike the said affidavits from the files of this court.

68 And afterwards, to wit, on the 9th day of July, 1892, being the 60th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

"Comes now the complainant, by its attorneys, and offers to consent that the court may order the moneys in the hands of the clerk deposited as a tender in this cause to be paid over to the several county, city, and town treasurers, marshall, and tax collectors according as they may be entitled to the same, as follows:

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS and Others.
} No. 6220. Circuit Court. Consent, &c.

Comes now the complainant, by its attorneys, and offers to consent that the court may order the moneys in the hands of the clerk deposited as a tender in this cause to be paid over to the several county, city, and town treasurers, marshals, and tax collect-
69 ors according as they may be entitled to the same as shown by the complaint herein, such payment to be made as payment of the dates respectively when the sums respectively mentioned in the complaint were tendered and to be without prejudice to the rights of either party to this cause.

SAMUEL O. PICKENS,
BUTLER, SNOW & BUTLER,
Att'ys for Pl't'f."

70 And afterwards, to wit, on the — day of December, 1892, being the 25th judicial day of the November term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

"Comes now the defendants, by their respective counsel, and each and all file their answer in general denial to the complaint herein as follows:

STATE OF INDIANA, } *ss:*
Marion County, }

In the Marion Circuit Court.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
} No. 6220. Answer.

Comes the defendants, by their attorneys, and each and every one of the defendants for answer to the complaint deny each and every allegation therein contained.

A. G. SMITH, *Att'y General.*
CLAYPOOL & CLAYPOOL,
W. A. KETCHAM,
Att'ys for Def'ts."

And now comes the parties, by their respective attorneys, and, by agreement made in open court, a jury is waived, and this cause is submitted to the court for trial and final decree.

And thereupon the court, having heard the evidence and the arguments of counsel and being fully advised in the premises, does now order and adjudge and decree:

First. That the equity of this cause is with the defendants.

Second. And that a perpetual injunction as prayed by plaintiff in

its bill of complaint herein be, and the same is hereby, denied by the court.

Third. And it is further ordered, adjudged, and decreed by the court that the defendants have and recover of and from said plaintiff their costs and charges by them in and about their defense in this behalf laid out and expended, taxed at $—.

To which order, judgment, and final decree of the court the plaintiff then and there excepted.

71 "Comes now the plaintiff, by council, and files its motion and reasons for a new trial of this cause; which said motion and reasons are in the words and figures following," viz:

72 In the Marion Circuit Court.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS. } No. —.

Motion for a New Trial.

The plaintiff in the above-entitled cause moves the court for a new trial thereof on the following grounds:

1. The decision of the court is not sustained by the evidence.
2. The decision of the court is contrary to law.
3. For error of law occurring at the trial and excepted to by the plaintiff in this, to wit:

The court erred in excluding the following extracts from the official report of the State board of equalization for 1890, offered by the plaintiff, to wit:

(From pages 3 and 4 of said report.)

Proceedings of the State Board of Equalization for the Year 1890.

STATE OF INDIANA, OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *June* 16, 1890.

In accordance with an act of the General Assembly of the State of Indiana, entitled "An act concerning taxation," approved March 29, 1881, the board of equalization within and for the State of Indiana convened at the office of the auditor of State and organized as required by law.

The following members were present: Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin, who took and subscribed to the following oath:

73 We, and each of us, do solemnly swear that we will support the Constitution of the United States and the constitution of the State of Indiana, and that we will faithfully and impartially

discharge our duties as members of the State board of equalization to the best of our ability.

IRA J. CHASE,
Lieutenant Governor.
BRUCE CARR,
Auditor of State.
J. A. LEMCKE,
Treasurer of State.
CHARLES F. GRIFFIN,
Secretary of State.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin, members of the State board of equalization, who were sworn according to law and subscribed their names hereto.

In witness whereof I have hereunto set my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

And thereupon, on motion of Bruce Carr, Alvin P. Hovey was chosen as president and Ira J. Chase as president *pro tem.*, and John W. Coons, deputy auditor of State, was chosen secretary of the board and took and subscribed to the following oath:

I, John W. Coons, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as
74 secretary of the State board of equalization to the best of my ability.

JOHN W. COONS.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named John W. Coons, who was sworn according to law and subscribed his name hereto.

Witness my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

Upon motion of Bruce Carr, the secretary was instructed to notify the several railroad companies who desire to make statements in behalf of their respective companies that the board will hear such arguments from Monday, June 23, to June 30, inclusive, and thereafter the board proceed to equalize and assess the railroads.

And thereupon the board adjourned.

IRA J. CHASE,
President Pro Tem.

Attest: J. W. COONS, *Secretary.*

INDIANAPOLIS, *June* 4, 1890.

The board met pursuant to adjournment.

75 Present: Ira J. Chase, Bruce Carr, and J. A. Lemcke, and Governor Hovey now took and subscribed to the following oath:

I, Alvin P. Hovey, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as a member of the State board of equalization to the best of my ability.

ALVIN P. HOVEY.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, who was sworn according to law.

In witness whereof I have hereunto set my hand and seal this 24th day of June, 1890.

GEORGE U. BINGHAM,
Notary Public.

(From page 7 of said report.)

INDIANAPOLIS, *June* 25, 1890.

The board met pursuant to adjournment.

Present: Alvin P. Hovey, Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin.

Col. H. B. Du Barry, representing the Pennsylvania system, made a lengthy statement in behalf of his several roads, showing to the board that the valuations of his road, in comparison with others, were excessive and should be reduced, &c., and thereupon the board adjourned until to-morrow morning at 10 o'clock.

ALVIN P. HOVEY,
President of Board.

Attest: JOHN W. COONS,
Secretary of Board.

76 (From pages 12 and 13 of said report.)

INDIANAPOLIS, *June* 11, 1890.

The board met pursuant to adjournment, all members being present.

The board now resumed the valuations and assessments of the roads and continued the same during the entire day, and the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon; that the same was ordered to be spread upon record and to stand as the assessment of the railroad property denominated "railroad track, rolling stock, and improvements on right of way" for the year 1890; which assessment is in the words and figures following, to wit:

5—1300

(From pages 14 and 19 of said report.)

Table No. 1.

Value per mile of main track, second main and side track, rolling stock, and improvements on right of way and in daily use for railroad purposes as fixed by the State board of equalization for the purpose of taxation for the year 1890:

Indianapolis and Vincennes:

116.92	miles	main track	per mile	$5,000
9.68	"	side track	" "	2,000
116.92	"	rolling stock	" "	1,000
Improvements on right of way				15,670

Island coal branch I. & V.:

11.85	miles	main track	per mile	$3,000
7.04	"	side track	" "	1,500
11.85	"	rolling stock		1,000

77 Gosport branch I. & V.:

4.18	miles	main track	per mile	$8,000
——	"	side track	" "	None.
4.18	"	rolling stock	" "	1,000

(From pages 113, 119, 120, 123, 125, 126, 127, and 132 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Greene county:														
Indianapolis & Vincennes	24.15	$19,400	$468,510	.....	.....	.....	1.84	$2,500	$4,600	24.15	$1,300	$31,395	$1,750	$506,255
Island coal branch, I. & V	9.86	11,700	115,362	.....	.....	.....	3.97	3,000	11,910	9.86	1,300	12,818	.....	140,090
Hendricks county:														
Indianapolis & Vincennes	1.69	19,400	32,786	.....	.....	.....	.12	2,500	300	1.69	1,300	2,197	.....	35,283
Knox county:														
Indianapolis & Vincennes	27.60	19,400	535,440	.....	.....	.....	2.45	2,500	6,125	27.60	1,300	35,880	5,095	582,540
Marion county:														
Indianapolis & Vincennes	11.89	19,400	280,666	.....	.....	.....	.84	2,500	2,100	11.89	1,300	15,457	225	248,448
Monroe county:														
Gosport branch, I. & V	2.82	10,900	30,738	.....	.....	.....	.13	2,500	325	2.82	1,300	3,666	.....	34,729
Morgan county:														
Indianapolis & Vincennes	27.65	19,400	536,410	.....	.....	.....	2.11	2,500	5,275	27.65	1,300	35,945	1,070	578,700
Owen county:														
Indianapolis & Vincennes	23.94	19,400	464,436	.....	.....	.....	3.23	2,500	8,075	23.94	1,300	31,122	1,795	505,428
Gosport branch, I. & V	1.49	10,900	16,241	.....	.....	.....	.....	.....	.....	1.49	1,300	1,937	.....	18,178
Sullivan county:														
Island coal branch, I. & V	2.02	11,700	23,634	.....	.....	.....	2.86	3,000	8,500	2.02	1,300	2,626	.....	34,840

(From pages 110 and 111 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Indianapolis & Vincennes	116.92	$19,400	$2,268,248	.....	.....	.....	10.59	$2,500	$26,475	116.92	$1,300	$151,996	$9,935	$2,456,654	$21,011
Island coal branch, I. & V	11.88	11,700	138,996	.....	.....	.....	6.83	3,000	20,490	11.88	1,300	15,444	.....	174,930	14,724
Gosport branch, I. & V	4.31	10,900	46,979	.....	.....	.....	.13	2,500	325	4.31	1,300	5,603	.....	52,907	12,275

79 (From pages 136 and 137 of said report.)

Hon. Bruce Carr, auditor of State:

It is hereby certified that the foregoing record, from pages 78 to 164, inclusive, is the true, full, and complete record of the proceedings of the State board of equalization for 1890, organized under the act entitled "An act concerning taxation," approved March 29, 1881, and that the same is a correct statement of the valuation made by said board for the year 1890.

ALVIN P. HOVEY,
Governor of Indiana
and President of the State Board of Equalization.

JOHN W. COONS,
Deputy Auditor of State
and Secretary of the State Board of Equalization.

OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *July* 25, 1890.

I, Bruce Carr, auditor of State of the State of Indiana, hereby certify that the within and foregoing is a true copy of the assessed value of the railroad property denominated "railroad track, rolling stock, and improvements on right of way" located, used, and operated in the State of Indiana as fixed and valued by the State board of equalization for the year 1890 and as certified to me by the president and secretary of said board on July 25, 1890.

In witness whereof I have hereunto set my hand and seal, at Indianapolis, this 25th day of July, A. D. 1890.

BRUCE CARR,
[L. S.] *Auditor of State.*

80 4. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence a duly certified copy of the return of the Terre Haute and Indianapolis Railroad Company for the year 1891, made to the auditor of State, offered by the plaintiff.

5. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence a duly certified copy of the return of the Michigan Central Railroad Company for the year 1891, made to the auditor of State, offered by the plaintiff.

6. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the duly certified copy of the return of the Terre Haute and Logansport Railroad Company for the year 1891, made to the auditor of State, offered by the plaintiff.

7. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the duly certi-

fied copy of the return of the Evansville and Terre Haute Railroad Company for the year 1891, made to the auditor of State, offered by the plaintiff.

8. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the portions of the printed official report of the proceedings of the State board
81 of tax commissioners for the year 1891, containing the assessment of the Terre Haute and Indianapolis Railroad Company for the year 1891, offered by the plaintiff.

9. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the portions of the printed official report of the proceedings of the State board of tax commissioners for the year 1891 containing the assessment of the Michigan Central Railroad Company for the year 1891, offered by the plaintiff.

10. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the portions of the printed official report of the proceedings of the State board of tax commissioners for the year 1891 containing the assessment of the Terre Haute and Logansport Railroad Company for the year 1891, offered by the plaintiff.

11. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the portions of the printed official report of the proceedings of the State board of tax commissioners for the year 1891 containing the assessment of the Evansville and Terre Haute Railroad Company for the year 1891 offered by the plaintiff.

12. For error of law occurring at the trial and excepted to *at* by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of J. T. Brooks, offered by the plaintiff, to the effect that the value of the railroad track and rolling stock of plaintiff on the first day
82 of April, 1891, in each of the counties in the State of Indiana through or into which the lines of plaintiff's railroad extended on said date was as follows:

In Marion county	$195,885 00
In Hendricks county	10,380 00
In Owen county	156,520 00
In Morgan county	172,190 00
In Monroe county	10,760 00
In Greene county	195,885 00
In Sullivan county	12,565 00
In Knox county	179,560 00

And that the aggregate of said values on said date was $811,230.00.

83 13. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of Alexander McElevey, offered by the plaintiff, showing the plaintiff's gross earnings, the operating expenses, the net earnings, the fixed charges, the annual deficit, and the amount advanced by the Pennsylvania Company to meet such deficit for each fiscal year of the plaintiff for the period of ten years preceding the year 1890.

84 14. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of M. W. Mansfield, offered by the plaintiff, to the effect that in the year 1891 the Indianapolis and Vincennes railroad could have been constructed and equipped with rolling stock, including the acquirement of the right of way, in the condition in which it was constructed and equipped on the first day of April of that year for thirteen thousand dollars ($13,000.00) per mile.

85 15. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of M. W. Mansfield, offered by the plaintiff, to the effect that the Island coal branch of the railroad of plaintiff is 11.88 miles in length, was built in 1884, and cost about $55,081.00; that the Gosport branch is 4.31 miles in length, was built in 1889, and cost $39,483 14; that neither of said branches have ever had any equipment apart from the equipment of the main line of plaintiff's road, and that said branch roads could have been constructed, including the right of way, in 1891 and put in the condition in which they were on the first day of April, 1891, for the cost of their original construction.

86 16. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of L. L. Gilbert, offered by the plaintiff, to the effect that the valuations of the "railroad track" and "rolling stock," upon which the amounts paid and tendered by the plaintiff to the defendants as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned, were the valuations of the "railroad track" and "rolling stock" belonging to the plaintiff on April first, 1890, and made and fixed by the State board of equalization for 1890 and distributed by the proper officers to the respective counties and cities through or into which the lines of plaintiff extended and of which the *the* defendants are respectively treasurers and tax collectors and as extended on the proper tax duplicates for 1890.

87 17. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of L. L. Gilbert, offered by the plaintiff, to the effect that the rates of tax levies, upon which the amounts paid or tendered by the plaintiff to the defendants as the amounts claimed by the plaintiff

to have been justly due and payable from it as taxes for the year 1891 were reckoned, were the rates of tax levies as made and fixed by the proper authorities of the respective counties, townships, and cities of which the defendants are respectively treasurers or tax collectors for the year 1891.

88 18. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in admitting in evidence the testimony of Hon. Claude Matthews, a witness for the defendants, to the effect that in assessing the plaintiff's property in the year 1891 the State board of tax commissioners did not make any assessment except upon the railroad track and rolling stock of plaintiff situate within the State of Indiana.

89 19. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in admitting in evidence the testimony of Hon. Claude Matthews, a witness for the defendants, to the effect that in assessing the property of plaintiff within the State of Indiana for the year 1891 the State board of tax commissioners did not assess any property of value outside of the State.

90 "And the court, being fully advised in the premises, now overrules said motion for a new trial; to which ruling of the court in overruling said motion for a new trial the plaintiff now excepts and prays an appeal to the supreme court and for time within which to file its bill of exceptions herein and appeal bond, which appeal is now granted by the court and ten days time given within which to file bill of exceptions and an appeal bond, conditioned in the sum of $1,000.00 and with sureties to be approved by the court."

91 And afterwards, to wit, on this 8th day of December, 1892, the same being the 28th judicial day of said November term of said court for said year 1892, before the honorable judge, the following proceedings were had herein, viz:

Comes now the plaintiff, by its attorneys, and tenders and submits to the court its bill of exceptions herein; which bill of exceptions is now within the time limited by the court signed and sealed by the court and made a part of the record in this cause; which bill of exceptions reads in the words and figures following, to wit:

92 In the Marion Circuit Court.

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*

Bill of Exceptions.

Be it remembered that on the 5th day of December, 1892, being the — juridical day of the November, 1892, term of said court, the following pleas and proceedings were had in said cause before the Honorable Edgar A. Brown, sole judge of said court, to wit:

Come now the parties, by their respective counsel, and, by agreement, a jury is waived and the cause is submitted to the court for trial.

And thereupon, upon the trial of the cause, the parties agreed in open court that the following facts alleged in the complaint are true, to wit:

That the plaintiff corporation is the owner of a line of railway extending from the city of Indianapolis, Marion county, Indiana, to the city of Vincennes, Knox county, Indiana, extending through and into the counties of Marion, Hendricks, Morgan, Monroe, Greene, Sullivan, and Knox, in said State of Indiana, and that the plaintiff corporation owned on the first day of April, 1891, as and for a right of way for said railway a strip of land on each side of
93 the center line of the main track of said railway as it extended into and through said named counties and cities, to wit, a strip of land twenty-five feet in width on each side of said center line as said railroad track extended through or into said counties and cities, and that the defendants are and at the beginning of this suit were, respectively, treasurers of the respective counties and cities, as alleged in the complaint herein.

The plaintiff then offered in evidence, to sustain the issues on its part, the following extracts from the printed official report of the State board of equalization for the year 1890 (it being agreed between the parties in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts of said original printed official report, and that the following extracts are all the portions of said report which relate to the assessment and valuation of the "railroad track" belonging to or controlled by the plaintiff corporation on the first day of April, 1890, and of the "rolling stock" belonging to or leased, hired, used, or operated by the plaintiff corporation on April first, 1890):

94 (From pages 3 and 4 of said report.)

Proceedings of the State Board of Equalization for the Year 1890.

STATE OF INDIANA,
OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *June* 16, 1890.

In accordance with an act of the General Assembly of the State of Indiana entitled "An act concerning taxation," approved March 29, 1881, the board of equalization within and for the State of Indiana convened at the office of the auditor of state and organized as required by law.

The following members were present: Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin, who took and subscribed to the following oath:

We and each of us do solemnly swear that we will support the Constitution of the United States and the constitution of the State

of Indiana, and that we will faithfully and impartially discharge our duties as members of the State board of equalization to the best of our ability.

IRA J. CHASE,
Lieutenant Governor.
BRUCE CARR,
Auditor of State.
J. A. LEMCKE,
Treasurer of State.
CHARLES F. GRIFFIN,
Secretary of State.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin,
95 members of the State board of equalization, who were sworn according to law and subscribed their names hereto.

In witness whereof I have hereunto set my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

And thereupon, on motion of Bruce Carr, Alvin P. Hovey was chosen as president and Ira J. Chase as president *pro tem.*, and John W. Coons, deputy auditor of state, was chosen secretary of the board and took and subscribed to the following oath:

I, John W. Coons, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of equalization to the best of my ability.

JOHN W. COONS.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named John W. Coons, who was sworn according to law and subscribed his name hereto.

Witness my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

96 "Upon motion of Bruce Carr, the secretary was instructed to notify the several railroad companies who desire to make statements in behalf of their respective companies that the board will hear such arguments from Monday, June 23, to 30, inclusive,

and that thereafter the board proceed to equalize and assess the railroads.

And thereupon the board adjourned.

IRA J. CHASE,
President pro Tem.

Attest: J. W. COONS, *Secretary.*"

INDIANAPOLIS, *June* 24, 1890.

The board met pursuant to adjournment.

Present: Ira J. Chase, Bruce Carr, and J. A. Lemcke; and Governor Hovey now took and subscribed to the following oath:

I, Alvin P. Hovey, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as a member of the State board of equalization to the best of my ability.

ALVIN P. HOVEY.

STATE OF INDIANA, *Marion County,* } *ss:*

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, who was sworn according to law.

In witness whereof I have hereunto set my hand and seal this 25th day of June, 1890.

GEORGE U. BINGHAM,
Notary Public.

97 (From pages 12 and 13 of said report.)

INDIANAPOLIS, *July* 11, 1890.

The board met pursuant to adjournment, all members present.

The board now resumed the valuations and assessments of the roads and continued the same during the entire day, and the following valuations per mile of the various roads within the State and the improvements on the right of way and in daily use by such railroads *was* unanimously agreed upon, and the same *was* ordered to be spread upon record and to stand as the assessment of the railroad property denominated "railroad track, rolling stock, and improvements on right of way" for the year 1890; which assessment is in the words and figures following, to wit:

98 (From pages 14 and 19 of said report.)

Table No. 1.

Value per mile of main track, second main and side track, rolling stock, and improvements on right of way and in daily use for railroad purposes as fixed by the State board of equalization for the purpose of taxation for the year 1890.

Indianapolis & Vincennes:

116.92	miles	main track	per mile	$5,000
9.68	"	side track	"	2,000
116.92	"	rolling stock	"	1,000
Improvements on right of way				15,670

Island coal branch I. & V.:

11.85	miles	main track	per mile	$3,000
7.04	"	side track	"	1,500
11.85	"	rolling stock	"	1,000

Gosport branch I. & V.:

4.18	miles	main track	per mile	$3,000
—	"	side track		None.
4.18	"	rolling stock	"	1,000

(From pages 113, 119, 120, 123, 125, 126, 127, and 132 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Equalization*, 1890.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Greene county:														
Indianapolis & Vincennes	24.15	$5,000	$120,750				1.82	$2,000	$3,640	24.15	$1,000	$24,15	$1,950	$150,490
Island coal branch, I. & V	9.86	3,000	29,580				3.97	1,500	5,955	9.86	1,000	9,860		45,395
Hendricks county:														
Indianapolis & Vincennes	1.69	5,000	8,450				.12	2,000	240	1.69	1,000	1,690		10,380
Knox county:														
Indianapolis & Vincennes	27.60	5,000	138,000				2.58	2,000	5,160	27.60	1,000	27,600	8,800	179,560
Marion county:														
Indianapolis & Vincennes	11.89	5,000	59,450				.80	2,000	1,660	11.89	1,000	11,890	430	73,370
Monroe county:														
Gosport branch, I. & V	2.69	3,000	8,070							2.69	1,000	2,690		10,760
Morgan county:														
Indianapolis & Vincennes	27.65	5,000	138,250				2.10	2,000	4,200	27.65	1,000	27,650	2,090	172,190
Owen county:														
Indianapolis & Vincennes	23.94	5,000	119,700				2.26	2,000	4,520	23.94	1,000	23,940	2,400	150,560
Gosport branch, I. & V	1.49	3,000	4,470							1.49	1,000	1,490		5,960
Sullivan county:														
Island coal branch, I. & V	1.99	3,000	5,970				3.07	1,500	4,605	1.99	1,000	1,990		12,565

(From pages 110 and 111 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1890, *as Valued and Equalized by the State Board of Equalization.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Indianapolis & Vincennes	116.92	$5,000	$584,600				9.68	$2,000	$19,360	116.92	$1,000	$116 920	$15,070	$736,550
Island coal branch, I. & V	11.85	3,000	35,550				7.04	1,500	10,560	11.85	1,000	11,850		57,960
Gosport branch, I. & V	4.18	3,000	12,540							4.18	1,000	4,180		16,720

100 (From pages 136 and 137 of said report.)

Hon. Bruce Carr, auditor of state:

It is hereby certified that the foregoing record from page 78 to 164, inclusive, is the true, full, and complete record of the proceedings of the State board of equalization for 1890, organized under the act entitled "An act concerning taxation," approved March 29, 1881, and that the same is a correct statement of the valuation made by said board for the year 1890.

ALVIN P. HOVEY,
Governor of Indiana and President of the State Board of Equalization.

JOHN W. COONS,
Deputy Auditor of State and Secretary of the State Board of Equalization.

OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *July* 25, 1890.

I, Bruce Carr, auditor of state of the State of Indiana, hereby certify that the within and foregoing is a true copy of the assessed value of railroad property denominated "railroad track," "rolling stock," and "improvements on right of way," located, used, and operated in the State of Indiana, as fixed and valued by the State board of equalization for the year 1890 and as certified to me by the president and secretary of said board on July 25, 1890.

In witness whereof I hereunto set my hand and seal, at Indianapolis, this 25th day of July, A. D. 1890.

BRUCE CARR,
[L. S.] *Auditor of State.*

101 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

102 And thereupon the court sustained the objection of the defendants and refused to admit said proposed evidence; to which ruling the plaintiff, by its counsel, at the time excepted.

103 And thereupon the plaintiff, by its counsel, introduced in evidence the following extracts from the printed official report of the proceedings of the State board of tax commissioners for the year 1891 (it being agreed between the parties in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that said copy shall be considered as in lieu of the original extracts of said original printed official report, and that the following extracts are all the portions of said report which relate to the assessment and valuation of the "railroad track" belonging to or controlled by the plaintiff corporation on the first day of April, 1890, and of the "rolling stock" belonging to or leased, hired, used, or operated by the plaintiff corporation on the first day of April, 1890):

(From pages 3, 4, and 5 of said report.)

"STATE OF INDIANA, OFFICE OF AUDITOR OF STATE,
"INDIANAPOLIS, *March* 21, 1891.

"In accordance with an act of the General Assembly of the State of Indiana entitled 'An act concerning taxation,' &c., approved March 6, 1891, the State board of tax commissioners within and for the State of Indiana convened at the office of the auditor of state and organized as required by law, the following members being present, to wit, Alvin P. Hovey, governor; Claude Matthews, secretary of state; Josiah Gwin and Ivan N. Walker, commissioners, who took and subscribed to the following oath:

"We, Alvin P. Hovey, Claude Matthews, Josiah Gwin, and Ivan N. Walker, and each of us, do solemnly swear that we will support the Constitution of the United States and the constitution of the State of Indiana, and that we will faithfully and impartially discharge our duties as members of the State board of tax com-
104 missioners, and that we will, according to our best knowledge and judgment, assess and equalize the property of the several counties of this State, and that we will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help us God.

ALVIN P. HOVEY, *Governor.*
CLAUDE MATTHEWS,
Secretary of State.
JOSIAH GWIN,
IVAN N. WALKER,
Commissioners."

STATE OF INDIANA, }
Marion County, } *ss:*

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, Claude Matthews, Josiah Gwin, and Ivan N. Walker, members of the State board of tax commissioners, who were sworn according to law, and subscribed their names thereto.

In witness whereof I have hereunto set my hand and official seal this 21st day of March, A. D. 1891.

ANDREW M. SWEENEY,
Cl'k Supreme Court.

And the board now organized with Alvin P. Hovey, governor, as chairman, and Joseph T. Fanning, deputy auditor of state, was unanimously chosen secretary of the board and took and subscribed to the following oath:

I, Joseph T. Fanning, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of tax commissioners to the best of my ability, so help me God.

JOSEPH T. FANNING.

STATE OF INDIANA, } ss:
Marion County, }

105 Before me personally appeared the within-named Joseph T. Fanning, who was duly sworn according to law, and subscribed his name hereto.

In witness whereof I hereunto set my hand and official seal this 21st day of March, A. D. 1891.

ANDREW M. SWEENEY,
Clerk Supreme Court.

INDIANAPOLIS, INDIANA,
MONDAY, *August* 3, 1891—9 o'clock a. m.

The State board of tax commissioners of the State of Indiana met in the office of the auditor of state at 9 o'clock a. m. on the 3rd day of August, 1891, being the first Monday of said month, in accordance with section 129 of the tax law approved March 6, 1891.

Present: Alvin P. Hovey, governor, chairman of the board; Claude Matthews, secretary of state; J. O. Henderson, auditor of state; I. N. Walker and Josiah Gwin, commissioners, and Joseph T. Fanning, deputy auditor of state and secretary of board.

Hon. John O. Henderson, auditor of state, now took and subscribed to the following oath:

STATE OF INDIANA, } ss:
Marion County, }

I, J. O. Henderson, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana; that I will faithfully and impartially discharge my duties as a member of the State board of tax commissioners; that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and that I will in no case assess any property at more or less than its true cash
106 value, as the same is defined in section 53 of the act concerning taxation, so help me God.

J. O. HENDERSON.

Subscribed and sworn to this 3rd day of August, 1891.

GEORGE U. BINGHAM,
Notary Public.

On motion of Mr. Walker, the following order of business was adopted for the consideration of the business before the board:

1st. The consideration of appeals from county boards of review.

2nd. The equalization of the assessments of realty as returned by the counties.

3rd. The assessment of railroad property and corporations.

On motion of Mr. Walker, the secretary of the board was directed to notify railroad corporations and companies that they would be required to put in writing their statements regarding the assessment of their property, and that only brief oral statements could be heard.

On motion of Mr. Henderson, the secretary was directed to notify the railroad companies and corporations that they will be heard on a certain date, and that the secretary designate the number to be heard each day.

On motion of Mr. Walker, it was agreed to begin the hearing of railroad companies and corporations on Thursday, August 20, 1891, at 9 o'clock a. m.

On motion of Mr. Walker, the board then adjourned until next Monday morning, August 10, 1891, at 10 o'clock.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOSEPH T. FANNING,
Secretary of the Board.

107 From pages 77 and 80.

INDIANAPOLIS, IND., TUESDAY, *September* 8, 1891—10 a. m.

The State board of tax commissioners met pursuant to adjournment.

The State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuations per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads *was* unanimously agreed upon and the same *was* ordered to be spread upon the record and to stand as the assessment of the railroad property denominated railroad track, rolling stock, and improvements on right of way for the year 1891; which assessment is in the words and figures, to wit:

108 (From pages 81 and 86 of said record.)

Table No. 1.

Value per mile of main tracks, second main and side tracks, rolling stock, and improvements of right of way and in daily use for railroad purposes as fixed by the State board of tax commissioners for the year 1891.

Indianapolis & Vincennes:			
116.92	miles	main track ---- per mile --	$19,400
10.59	"	side track ---- " " --	2,500
116.92	"	rolling stock ---- " " --	1,300
Improvements on right of way ----			9,945
Island coal branch:			
11.88	miles	main track ---- per mile --	$11,700
6.83	"	side track ---- " " --	3,000
11.88	"	rolling stock ---- " " --	1,300
Gosport branch:			
4.31	miles	main track ---- per mile --	$10,900
.13	"	side track ---- " " --	2,500
4.31	"	rolling stock ---- " " --	1,300

(From pages 188, 195, 196, 198, 201, 202, 203, 204, 209 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Greene county:														
Indianapolis & Vincennes	24.15	$19,400	$468,510				1.84	$2,500	$4,600	24.15	$1,300	$31,395	$1,750	$506,255
Island coal branch, I. & V	9.86	11,700	115,362				3.97	3,000	11,910	9.86	1,300	12,818		140,090
Hendricks county:														
Indianapolis & Vincennes	1.69	19,400	32,786				.12	2,500	300	1.69	1,300	2,197		35,283
Knox county:														
Indianapolis & Vincennes	27.60	19,400	535,440				2.45	2,500	6,125	27.60	1,300	35,880	5,095	582,540
Marion county:														
Indianapolis & Vincennes	11.89	19,400	280,666				.84	2,500	2,100	11.89	1,300	15,457	225	248,448
Monroe county:														
Gosport branch, I. & V	2.82	10,900	30,738				.13	2,500	325	2.82	1,300	3,666		34,729
Morgan county:														
Indianapolis & Vincennes	27.65	19,400	536,410				2.11	2,500	5,275	27.65	1,300	35,945	1,070	578,700
Owen county:														
Indianapolis & Vincennes	23.94	19,400	464,436				3.23	2,500	8,075	23.94	1,300	31,122	1,795	505,428
Gosport branch, I. & V	1.49	10,900	16,241							1.49	1,300	1,937		18,178
Sullivan county:														
Island coal branch, I. & V	2.02	11,700	23,634				2.86	3,000	8,500	2.02	1,300	2,626		34,840

(From pages 184, 185 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile	Total.	Miles.	Per mile.	Total.			
Indianapolis & Vincennes	116.92	$19,400	$2,268,248				10.59	$2,500	$26,475	116.92	$1,300	$151,996	$9,935	$2,456,654	$21,011
Island coal branch, I. & V	11.88	11,700	138,996				6.83	3,000	20,490	11.88	1,300	15,444		174,930	14,724
Gosport branch, I. & V	4.31	10,900	46,979				.13	2,500	325	4.31	1,300	5,603		52,907	12,275

7—1300

110 (From page 213 of said report.)

"Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

In arriving at the basis for the estimate of said values, the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same."

111 (From page 221 of said report.)

"Hon. J. O. Henderson, auditor of state.

It is hereby certified that the foregoing record from page 116 to page 312, inclusive, is the true, full, and complete record of the proceedings of the State board of tax commissioners, organized under the act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and that the same is a correct statement of the rates finally determined by said board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by the said board and the valuations made by said board for the year 1891.

ALVIN P. HOVEY,
Governor of Indiana and Chairman of the State Board of Tax Commissioners.

JOSEPH T. FANNING,
Deputy Auditor of State and Secretary of the State Board of Tax Commissioners."

112 (From page 222 of said report.)

"STATE OF INDIANA, OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of the State of Indiana, do hereby certify that the foregoing is a true copy of the record of the proceedings of the State board of tax commissioners, and that the same contains a true copy of the actions of said board in fixing the assessments of the several corporations, firms, and individuals therein mentioned and the orders of said board concerning appeals taken from the orders of the several boards of review of the several counties of the State, and of the equalization of the assessments of the real property in the several counties of this State, and of the valuations and assessments of the railroad property denominated 'railroad track' and 'rolling stock' and 'improvements on right of way' located, used, and operated in the State of Indiana, as fixed and valued by the State board of tax commissioners for the year 1891 and as cer-

tified to me by the chairman and secretary of said board on the 11th day of September, 1891.

In witness whereof I have hereunto set my hand and affixed my official seal, at the city of Indianapolis, this 11th day of September, 1891.

[SEAL.] J. O. HENDERSON,
Auditor of State."

113 And thereupon the plaintiff, by its counsel, introduced in evidence a copy of the return of the plaintiff corporation for the year 1891 made to the auditor of State and duly certified by the auditor of State, said return being in the words and figures following, to wit:

114 Auditor's

(This blank to be filed with auditor

Annual Return of the Indianapolis and Vincennes Railroad Company

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by pany, on the 1st day of April, 1891, as required of rail

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Main line:							
Greene	287	91	6,421	965	24	15	89,274
Hendricks	10	76	215		1	69	6,232
Knox	305	88	11,940	5,095	27	60	102,034
Marion	104	20	2,104	225	11	89	43,948
Morgan	326	71	9,390	1,070	27	65	102,206
Owen	283	33	8,676	1,795	23	94	88,501
	1,318	79	$38,746	$9,150	116	92	$432,195
Island coal br.:							
Greene	57	80	595	110	9	86	26,050
Sullivan	11	92	120		2	02	5,334
	69	72	$715	$110	11	88	$31,384
Gosport br.:							
Monroe	14	64	293		2	82	7,444
Owen	9	01	180		1	49	3,927
	23	65	$473		4	31	$11,371
Totals in State	1,412	16	$39,934	$9,260	133	11	$474,950

form.

of state between April 1 and June 1.)

to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Pennsylvania Company, operating the Indianapolis & Vincennes Railroad Com-road companies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
			1	84	2,908	24	15	19,065	118,633
			0	12	197	1	69	1,335	7,979
			2	45	3,865	27	60	21,790	144,724
			0	84	1,331	11	89	9,385	56,993
			2	11	3,354	27	65	21,830	137,850
			3	23	5,135	23	94	18,900	123,007
			10	59	$16,790	116	92	$92,305	$589,186
			3	97	4,193	9	86	7,785	38,733
			2	86	3,021	2	02	1,595	10,070
			6	83	$7,214	11	88	$9,380	$48,803
			0	13	144	2	82	2,225	10,106
						1	49	1,175	5,282
			0	13	$144	4	31	$3,400	$15,388
			17	55	$24,148	133	11	$105,085	$653,377

115 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the Pennsylvania Co., operating the Indianapolis & Vincennes Railroad Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	11	1,952 73	21,480
Locomotives, second class				
Passenger cars, first class		8	1,200 00	9,600
Passenger cars, second class				
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars		4	600 00	2,400
Box cars		63	210 00	13,230
Stock cars		24	195 00	4,680
Coal cars		187	165 00	30,855
Platform cars		128	150 00	19,200
Wrecking and camp cars		1	--- ---	180
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars		12	240 00	2,880
Tank or oil cars				
Pile-driving cars				
Push-cars		28	10 00	280
Hand cars		20	15 00	300
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana ---------- 133 miles, 11 hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ---------- 0 miles, 0 hund.

Total length of road ---------- 133 miles, 11 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used.

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. None.

Give name of express company doing business over your line. Adams.

Give names of fast-freight companies owning their own cars doing business over your line. None.

Give name and address of president of your company. Geo. B. Roberts, Philadelphia, Pa.

Give name and address of secretary of your company. S. B. Liggett, Pittsburgh, Pa.

Give name and address of gen'l manager or sup't of your company. Jos. Wood, Pittsburgh, Pa.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. H. B. Du Barry, ass't engineer, Pittsburgh, Pa.

116 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the —— Rail— Company on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,800.
State length of time road has been built. ——.
State number miles of track laid with steel rail. 87.51.
State number miles of track laid with iron rail. 45.60.
State number miles of siding laid with steel rail. ——.
State number miles of siding laid with iron rail. 17.55.
State weight of iron and steel rail used in main track and sidings. ——.
State kind of "joints" or "chairs" used. ——.
State proportion of ballast used on road: Rock, ——; gravel, ——; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Penna. Co., operating the Indianapolis & Vincennes Railroad Company, on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$3,000,000 00
Number of shares	28,040 00
Amount of capital stock paid up	$1,402,000 00
Market value of stock per share	Nominal.
Actual value of stock per share	"

Indebtedness.

Amount of 1st-mortgage bonds	1,700,000 00
Amount of 2d-mortgage bonds	1,402,000 00
Amount due Penna. Co., lessee, for advances	2,284,083 22
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	$5,386,083 22

Current expenses for operating road (included in am't due lessee for advances).
Total listed valuation of all tangible property in this State, $666,235.00.

Earnings.

Gross earnings of entire road, as shown by last official report of company	$459,606 66
Net earnings of entire road, as shown by last official report of company	66,689 79
Gross earnings of miles of road within this State, as shown by last official report	459,606 66
Net earnings of miles of road within this State, as shown by last official report	66,689 79
Average annual net earnings per mile over entire line, as shown by last official report	501 05
Average annual gross earnings per mile over entire line, as shown by last official report	3,453 09

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

117 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water "Right of Way" of said Road

County.	Township.	Descri Name of station.
☞ (Arrange counties in alphabetical order.)		
Greene	Jefferson	Worthington
	Fair Play	Swetz City
	Washington	Lyons
	Stafford	Marco
	Stockton	Black Creek
Knox	Vigo	Sandborne
		Westphalia
		Edwardsport
	Washington	Bruceville
	Vincennes	Vincennes
Marion	Center	Indianapolis
		West "
		Belt Crossing
	Wayne	Maywood
	Decatur	Samoa
		Valley Mill
		West Newton
Morgan	Brown	Mooresville
		West of "
	Clay	Brooklyn
		Bethany Park
		Centerton
	Washington	Martinsville
	Jefferson	West of "

No. 5.

Tanks, Other Buildings, Belonging to the —— Rail— Company, Situated upon the in State of Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Station-house	20 x 70	Frame	22	200
Water tank	14 " 20	"	12	200
Pump-house	12 " 16	"	12	20
Station "	20 " 50	"	20	150
" "	16 " 36	"	18	75
" "	20 " 50	"	22	200
Water tank	14 " 20	"	14	100
Pump-house	12 " 16	"	14	20
Water tank	10 " 16	"	6	100
Pump-house	16 " 20	"	6	10
Total Greene county				**1,075**
Station-house	16 " 36	"	18	150
" "		"	3	25
" "	20 " 70	"	21	200
Water tank	14 " 20	"	14	150
Pump-house	12 " 16	"	14	40
Station "	20 " 50	"	21	150
Passenger "	24 " 60	Brick	23	600
Freight "	30 " 150	Frame	19	500
Tool "		"	16	50
Engine "	66 x 100	Brick	16	3,000
Water tank	16 x 20	Frame	16	150
Supply-house	18 x 31	"	9	50
Coal "	9 x 18	"	9	30
Total Knox county				**5,095**
2 watch-houses	8 x 10	"	7	20
1 " "	8 x 10		7	10
Station "	12 x 16	"	15	30
" "	18 x 50	"	23	75
" "	12 x 15	"	8	10
" "	18 x 25	"	13	40
" "	18 x 25	"	14	40
Total Marion county				**225**
Station-house	28 x 48	"	23	110
Water tank	14 x 20	"	13	100
Pump-house	12 x 16	"	13	20
Station-house	15 x 30	"	23	150*
Telegraph office	12 x 12	"	9	30
Shelter shed	17 x 40	"	4	50
Station-house	15 x 30	"	23	140
" "	20 x 70	"	22	200
Water tank	14 x 20	"	22	100

Schedule No.

County.	Township.	Descri Name of station.
	Ray	Paragon
118 Owen	Wayne Washington	Gosport Romona Spencer
	Franklin	Freedom

119 & 120 [Endorsed:] Return of Indpls. & Vincennes Railroad Company. April 1, 1892. Received May 21*th*, 1891. J. O. Henderson, auditor of state.

STATE OF PENNSYLVANIA, *County of Allegheny,* } *ss:*

Thomas D. Messler,* vice-president, — S. B. Liggett, secretary, of the Penna. Co., opr. Ind. & Vincennes R. R., being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891, to the best of their knowledge and belief.

THOS. D. MESSLER, *Vice-Pres't.**
S. B. LIGGETT, *Sec'y.*

Subscribed and sworn to before me this 15th day of May, 1891.

† M. H. SHANE,
Notary Public.

* General superintendent or general manager.
† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."				True cash value.
For what use.	Dimensions.	Kind.	Age.	
Pump-house	12 x 16	Frame	22	20
Station "	15 x 30	"	23	150
Total Morgan county				**1,070**
Amount forward				$7,465
Brought for'd				7,465
Station-house	14 x 20	Frame	23	150
" "	12 x 12	"	6	50
Passenger "			3	800
Freight "	20 x 89	"	22	250
Engine "	61 x 62	"	22	50
Store "	18 x 32	"	10	50
" "	18 x 32	"	9	80
Water tank	12 x 14	"	14	200
Pump-house	12 x 12	"	14	40
Station "	20 x 50	"	22	125
Total Owen county				**1,795**
Total in State				9,260

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Indianapolis and Vincennes Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891, for the year 1891 as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

[L. S.] J. O. HENDERSON,
Auditor of State.

121 And thereupon the plaintiff, by its counsel, offered in evidence a copy of the return for the year 1891 of the Terre Haute and Indianapolis Railroad Company made to the auditor of state and duly certified by the auditor of state, said return being in the words and figures following, to wit:

122 **Auditor's**

(This blank to be filed with auditor

Annual Return of the Terre Haute and Indianapolis Railroad Company

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by required of railroad companies,

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Vigo	106	13	1,860	30,063	16	14	96,840
Clay	306	55	3,060	2,144	13	81	82,860
Putnam	239	10	2,390	2,164	21	13	126,780
Hendricks	225	47	2,250	1,439	19	65	117,960
Marion	89	93	24,050	8,096	9	17	54,696
Totals in State	967	18	33,610	43,906	79	90	479,076

123 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the Terre Haute and Indianapolis Railroad Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	25	2,400	60,000 00
Locomotives, second class		20	1,200	24,000 00
Passenger cars, first class		17	1,200	20,400 00
Passenger cars, second class		10	750	7,500 00
Pay cars		1	1,000	1,000 00
Officers' cars		1	1,000	1,000 00
Sleeping cars				
Dining and drawing room cars				
Postal cars		5	900	4,500 00
Combination cars		2	750	1,500 00
Baggage, mail, or express cars		16	475	7,600 00
Box cars		278	150	41,700 00
Stock cars		48	150	7,200 00
Coal cars		1008	130	131,040 00
Platform cars		166	115	19,090 00
Wrecking and camp cars		3	300	900 00
Ice and refrigerator cars		9	150	1,350 00
Fast-freight-line cars		85	125	10,625 00
Caboose cars		22	190	4,180 00
Tank or oil cars				
Pile-driving cars				
Push-cars		23	5	115 00
Hand cars		28	8	224 00
2 steam shovels and 1 paint car				1,500 00
Total listed value of rolling stock				345,424 00

form.

of state between April 1 and June 1.)

to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, as according to section 85 tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
---	---	---	22	01	23,200	---	---	---	151,963
---	---	---	49	52	52,320	---	---	---	140,384
---	---	---	7	18	7,500	---	---	---	138,834
---	---	---	3	51	3,700	---	---	---	125,289
---	---	---	15	61	16,500	---	---	---	103,342
---	---	---	97	83	103,220	---	---	---	659,812

Length of main track on which said rolling stock is used in Indiana ---- 79 miles, 90 hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ---- — miles, — hund.

Total length of road ---- 79 miles, 90 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Pullman Palace Car Co.

Give name of express company doing business over your line. Adams' Express Co.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. Wm. R. McKeen, Terre Haute, Indiana.

Give name and address of secretary of your company. Geo. E. Farrington, Terre Haute, Indiana.

Give name and address of gen'l manager company. Jno. G. Williams, Terre Haute, Indiana.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Wm. R. McKeen or Jno. G. Williams, Terre Haute, Indiana.

124 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, and hereby scheduled and returned, as required by railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 3,000 in main and 2,640 in side.
State length of time road has been built. 39 years.
State number miles of track laid with steel rail. 79.90.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 47.33.
State number miles of siding laid with iron rail. 50.52.
State weight of iron and steel rail used in main track and sidings. Main tracks, 70 and 60 lbs.; siding, 56 and 60 lbs.
State kind of "joints" or "chairs" used. Angle bars.
State proportion of ballast used on road. Rock, ——; gravel, 79.90; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, as required of railroad companies according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$1,988,150 00
Number of shares	39,763
Amount of capital stock paid up	1,988,150 00
Market value of stock per share	47.50
Actual value of stock per share	47.50

Indebtedness.

Amount of 1st-mortgage bonds	1,600,000 00
Amount of 2d-mortgage bonds	600,000 00
Amount of — mortgage bonds	
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	$3,137,250 13

Current expense for operating road, $229,807.56.

Total listed valuation of all tangible property in this State, $——.

Earnings.

Gross earnings of entire road, as shown by last official report of company	$1,213,619 54
Net earnings of entire road, as shown by last official report of company	379,762 09
Gross earnings of miles of road within this State, as shown by last official report	1,313,619 54
Net earnings of miles of road within this State, as shown by last official report	379,762 09
Average annual net earnings per mile over entire line, as shown by last official report	4,752 96
Average annual gross earnings per mile over entire line, as shown by last official report	15,284 88

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

125 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water pany, Situated upon the "Right of Way"

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Clay	Van Buren	Harmony
		Knightsville
	Brazil	Brazil
	Posey	Staunton
		Cloverdale
	Sugar Ridge	Ashborough
Hendricks	Guilford	Plainfield
	Liberty	Cartersburg
		Clayton
		Summit
	Clay	Amo
		Coatsville
126 Marion		Indianapolis

No. 5.

Tanks, Other Buildings, Belonging to the Terre Haute and Indianapolis Railroad Com- of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	16 x 45	Frame	23 years	200 00
Freight-house	20 x 50	"	23 "	125 00
Section "	16 x 24	"	11 "	125 00
Hand-car "	10 x 16	"	20 "	15 00
Depot	20 x 40	"	17 "	350 00
Coal-house	12 x 16	"	1 "	25 00
Depot	20 x 74	Brick	23 "	450 00
Baggage-room	18 x 20	Frame	13 "	75 00
Freight-house	24 x 50	"	17 "	125 00
Car & coal house	24 x 50	"	27 "	100 00
Water tank	24 x 34	"	18 "	175 00
Engine-house	34 x 124	"	19 "	185 00
3 watch-houses	6 x 8	"	7 "	15 00
Depot	20 x 38	"	30 "	75 00
Hand-car house	10 x 16	"	30 "	10 00
Passenger shed	12 x 18	"	3 "	15 00
Depot	14 x 20	"	4 "	75 00
Hand-car house	10 x 16	"	30 "	4 00
Total Clay county				2,144 00
Depot	16 x 45	Frame	23 years	100 00
Freight-house	20 x 50	"	37 "	50 00
Watch "	7 x 12	"	19 "	4 00
Water tank	20 ft. dia.	"	3 "	75 00
Freight-house	14 x 20	"	28 "	25 00
Depot	16 x 32	"	23 "	75 00
Section-house	16 x 32	"	26 "	75 00
Hand car	10 x 16	"	29 "	10 00
" "	10 x 16	"	29 "	10 00
Section "	16 x 38	"	27 "	75 00
Depot	16 x 45	"	23 "	100 00
Watch-house	8 x 12	"	8 "	5 00
Pump "	12 x 16	"	8 "	30 00
Water tank	16 x 16	"	13 "	70 00
Depot	16 x 45	"	21 "	100 00
Hand-car house	14 x 20	"	27 "	20 00
Depot	19 x 52	Brick	9 "	600 00
Coal-house				15 00
Total Hendricks county				1,439 00
Inspection-house	8 x 10	Frame	2 years	8 00
Office	44 x 62	Brick	25 "	3,500 00
Freight-house	62 x 355	"	25 "	
2 watch-houses	7 x 7	Frame	8 "	12 00
Yard office		"	New	800 00
Oil-house	12 x 20	"	7 years	30 00
Water tank	20 ft. dia.	"	1 "	75 00
Carpenter's shop	24 x 112	"	21 "	50 00
Wood-shed	24 x 112	"	21 "	50 00
Coal "	24 x 96	"	21 "	30 00

Schedule No.

County.	Township.	Descri Name of station.
	Center	White River
		W. Indianapolis
	Wayne	Eagle Creek
		Bridgeport
Putnam	Marion	Fillmore
	Green Castle	Green Castle
		Junction
	Washington	Reelsville
127 Vigo	Lost Creek	Sulyville
		Glendale
	Harrison	Terre Haute

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Sand-house	16 x 24	Frame	21 years	20 00
Blacksmith shop	20 x 122	Brick	18 "	425 00
Engine-house	185 ft. dia.	"	20 "	2,750 00
Pump "	15 x 15	"	20 "	60 00
Car & tool house	14 x 20	Frame	6 "	40 00
Switch-house	8 x 8	"	2 "	8 00
Yard office	16 x 32	"	13 "	75
Watch-house	7 x 7	"	1 "	7 00
"	7 x 12	"	19 "	4 00
Depot	16 x 32	"	23 "	70 00
Hand-car house	14 x 20	"	27 "	7 00
Section "	16 x 50	"	26 "	75 00
Total Marion county				8,096 00
Hand-car house	14 x 20	Frame	28 years	20 00
Depot	14 x 20	"	20 "	75 00
Coal house	12 x 16	"	1 "	15 00
Hand-car house	10 x 16	"	30 "	10 00
Coal-sheds	18 x 70	"	23 "	70 00
Carpenter shops	24 x 32	"	23 "	50 00
Water tank	24 ft. dia.	"	8 "	100 00
"	20 "	"	3 "	75 00
Depot	$\left\{\begin{array}{l} 20\frac{1}{2} \text{ x } 52\frac{1}{2} \\ \text{is } 14 \text{ x } 15 \end{array}\right\}$	"	4 "	750 00
Coal-house	12 x 16	"	4 "	10 00
Hand-car house	12 x 16	"	4 "	10 00
Dwelling "				550 00
Depot	22 x 46 x 110	"	23 "	175 00
"	16 x 32	"	23 "	100 00
Pump-house	22 x 24	"	15 "	50 00
2 water tanks	16 ft. dia.	"	14 "	100 00
Hand-car house	10 x 16	"	30 "	4 00
Total Putnam county				2,164 00
Depot	16 x 40	Frame	3 years	275 00
Section-house	16 x 36	"	22 "	100 00
Hand-car house	14 x 20	"	22 "	15 00
Passenger shed	10 x 18	"	8 "	40 00
East yard office	14 x 20	"	4 "	75 00
Check "	8 x 9	"	4 "	10 00
Coach-house	56 x 360	Brick	22 "	2,250 00
Paint shop	56 x 150	"	23 "	1,100 00
Coach "	35 x 160	Frame	27 "	475 00
Repair "	75 x 150	Brick	24 "	2,750 00
Car "	28 x 135	Frame	18 "	175 00
Dry-house	17 x 35	Brick	27 "	175 00
Office	28 x 28	"	12 "	325 00
Carpenter shop	60 x 210	"	22 "	3,400 00
Blacksmith "	84 x 124	"	22 "	1,400 00
Coal-shed	24 x 186	Frame	19 "	125 00
Wood "	24 x 160	"	24 "	75 00
Boiler shop	90 x 96	Brick	24 "	1,000 00
Machine shop	100 x 168	"	22 "	2,200 00
Engine repair	54 x 120	"	23 "	1,500 00
Star-house office	36 x 120	"	22 "	1,400 00

Schedule No.

County.	Township.	Descri Name of station.

128 [Endorsed:] Return of Terre Haute and Indianapolis Railroad Company. April 1, 1892. Received June 19th, 1891. J. O. Henderson, auditor of state.

STATE OF INDIANA, *Vigo County*, } ss:

John G. Williams, general manager, and Geo. E. Forrington, secretary, of the Terre Haute and Indianapolis Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railroad company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

JOHN G. WILLIAMS,
*Gen'l Manager.**
GEO. E. FORRINGTON, *Sec'y.*

Subscribed and sworn to before me this 17th day of June, 1891.

†HORACE M. SMITH,
Notary Public.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

* General superintendent or general manager.

† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Engine-house	260 ft. dia.	Brick	21 years	5,000 00
Depot	60 x 60 / 60 x 80	"	27 "	2,500 00
Baggage-room	20 x 70 / 14 x 20	Frame	24 "	75 00
Mail "	14 x 20	"	4 "	50 00
Ice-house	16 x 24	"	4 "	20 00
Freight-house	64 x 380	Brick	34 "	3,250 00
Office	54 x 78	"	34 "	
Switch-house	9 x 12	Frame	" "	7 00
Line-repairer's office	18 x 24	"	4 "	25 00
Oil-rooms	24 x 24	"	19 "	175 00
Tool-house	8 x 9	"		7 00
Hand-car house	14 x 20	"	27 "	10 00
2 street watch-houses	8 x 8	"	2 "	14 00
4 " "	7 x 7	"	3 to 8	20 00
6 " "	8 x 9	"	17 years	30 00
1 bridge "				5 00
Tool "	14 x 20	Frame	26 "	10 00
Total Vigo county				30,063 00

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Terre Haute and Indianapolis Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891, for the year 1891 as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

[L. S.] J. O. HENDERSON, *Auditor of State.*

129 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

130 And thereupon the court sustained said objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

131 And thereupon the plaintiff, by its counsel, offered in evidence a copy of the return for the year 1891 of the Michigan Central Railroad Company made to the auditor of state and duly certified by the auditor of state, said return being in the words and figures following, to wit:

132 Auditor's

(This blank to be filed with auditor

Annual Return of the Michigan Central Railroad Company

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by
nies, according to section

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
La Porte	70	79		20,765	8	96	161,280
Porter	220	65		2,910	17	04	306,720
Lake	213	63		5,465	16	41	295,380
Totals in State	505	07		29,140	42	41	763,380

form.

of state between April 1 and June 1.)

to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the — Rail- Company, on the 1st day of April, 1891, as required of railroad compa- 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
8	96	44,800	18	58	37,160	8	96		
17	04	85,200	5	43	10,860	17	04		
16	41	82,050	8	49	16,980	16	41		
42	41	212,050	32	50	65,000	42	41		

133 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the Michigan Central Railroad Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	5	4,500	22,500
Locomotives, second class		43	3,000	129,000
Third class		236	2,250	531,000
Passenger cars, first class		82	1,500	123,000
Passenger cars, second class		41	1,000	41,000
Pay cars		1	1,000	1,000
Officers' cars		4	1,500	6,000
Sleeping cars				
Dining and drawing room cars		6	2,000	12,000
Postal cars		12	1,000	12,000
Combination cars		17	1,000	17,000
Baggage, mail, or express cars		48	8,000	38,400
Box cars		3385	150	507,750
Stock cars		1051	125	132,625
Coal cars		424	100	42,400
Platform cars		2612	100	261,200
Wrecking and camp cars		75	200	15,000
Ice and refrigerator cars		9	200	1,800
Fast-freight-line cars		1487	100	148,700
Caboose cars		166	170	28,220
Tank or oil cars				
Pile-driving cars		10	250	2,500
Push-cars		222	10	2,220
Hand cars		318	10	3,180
Snow ploughs		5	250	1,250
All other kinds of cars and logging trucks		52	25	1,300
Total listed value of rolling stock				2,081,045

Length of main track on which said rolling stock is used in Indiana ..... 42 miles, 41 hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ..... 1,110 miles, 64 hund.

Total length of road ..... 1,153 miles, 05 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

Michigan Central railroad	Michigan 221.59; Illinois 20.07	241 miles, 66 hund.	
Michigan Air-Line railroad	Michigan 109.10; Illinois 6.06	115 miles, 16 hund.	
Joliet and Northern Indiana railroad	Indiana 15.47; Illinois 29.53	45 miles, 00 hund.	
Grand River Valley railroad, Michigan		83 miles, 79 hund.	
Jackson, Lansing and Saginaw railroad, Michigan		295	10
Kalamazoo and South Haven railroad,	"	39 miles, 50 hund.	
Detroit and Bay City railroad,	"	151	42
Saginaw Bay and Northwestern railroad,	"	87 miles, 21 hund.	
Battle Creek and Sturgis railway,	"	33	80
Bay City and Battle Creek railway,	"	18 miles, 00 hund.	
		1,110	64

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Wagner Palace Car Company.

Give name of express company doing business over your line. American Express Co.

Give names of fast-freight companies owning their own cars doing business over your line. Merchants' Despatch Transfer Company.

Give name and address of president of your company. H. B. Ledyard, Detroit, Michigan.

Give name and address of secretary of your company. E. D. Worcester, New York city, N. Y.

Give name and address of gen'l manager or sup't of your company. H. B. Ledyard, Detroit, Michigan.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. D. A. Waterman, auditor, Detroit, Mich.; F. S. Winston, James F. Meagher, Chicago, Ill., Adams Express building.

134 SCHEDULE No. 3.—Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Michigan Central Railroad Company on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,640.
State length of time road has been built. About 39 years.
State number miles of track laid with steel rail. Main second track, 42.41 each.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 2½ miles old steele.
State number miles of siding laid with iron rail. 30 " iron.
State weight of iron and steel rail used in main track and sidings. 60 and 65 lbs.
State kind of "joints" or "chairs" used. Fish-plates.
State proportion of ballast used on road: Rock, ——; gravel, ——; dirt, ——; other material, sand.

SCHEDULE No. 4.—Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Michigan Central Rail-Company, on the 1st day of April, 1891, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized, $—.	The Michigan Central railroad is a Michigan corporation and has no capital stock in the State of Indiana.
Number of shares	
Amount of capital stock paid up	
Market value of stock per share	
Actual value of stock per share	

Indebtedness.

Amount of 1st-mortgage bonds	$10,000,000 00
Amount of 2d-mortgage bonds	None.
Amount of — mortgage bonds	
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	
Current expense for operating road	
Total listed valuation of all tangible property in this State, $—	

Earnings.

Gross earnings of entire road, as shown by last official report of company	$14,490,711 79
Net earnings of entire road, as shown by last official report of company	3,758,957 72
Gross earnings of miles of road within this State, as shown by last official report	No record.
Net earnings of miles of road within this State, as shown by last official report	
Average annual net earnings per mile over entire line, as shown by last official report	2,335 89
Average annual gross earnings per mile over entire line, as shown by last official report	9,004 80

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON, *Auditor of State.*

135 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water upon the "Right of Way" of said

	County.	Township.	Descri Name of station.
	☞(Arrange counties in alphabetical order.)		
	La Porte	Michigan	Michigan City
136	Porter	Portage	Christman's
		West Chester	Porter Station
			Furnace Station
137	Lake	Hobert	Lake

No. 5.

Tanks, Other Buildings, Belonging to the Michigan Central Railroad Company, Situated Road in La Porte County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
3 switch-houses	6 x 6	Wooden	11	30
2 hand-car houses	11 x 16	"	17	30
1 signal-house	8 x 8	"	9	20
2 " cable-houses	8 x 8	"		40
Tool and oil house	12 x 30	Frame	4	30
Same	14 x 30	"	4	30
Coal-shed	11 x 20	Boards	8	15
Watch-house	6 x 7		11	10
Tool "	6 x 10		11	10
Freight "	22 x 180	Frame	19	1,500
Passenger-house, av'ge width	32 x 170	Brick	8	7,000
Machine shop	60 x 247	"	38	2,000
Office	28 x 15	"	38	200
Round-house	16 stalls	Stone & brick	38	1,800
" "	22 "	"	18	3,500
Ice-house	30 x 60	Frame	5	400
Same	30 x 60	"	1	450
Horse barn	17 x 20	Board	38	20
2 water tanks	30 ft. dia. each	Oak & pine	11	700
Coal shed	28 x 145	Board	18	150
" chute	28 x 328	Frame	18	700
Coal office	12 x 16	"	18	40
" house	10 x 12	Rough board	18	10
Lamp house	12 x 12	"	21	10
Sand "	16 x 32	Frame	18	40
Car-repair shops	24 x 112	"	6	500
Conductors' eating-house	24 x 90	"	11	1,500
Oil-house	12 x 16	Boards	11	20
Coal-shed	12 x 16	"	11	10
Amount forward				20,765
Passenger-house	20 x 40	Frame	5 years	600
Freight "	11 x 27	"	22 "	80
Coal-bins	10 x 16	Board	22 "	20
Target-tender house	15 x 20	Wooden	22	40
" shed	8 x 8	"		10
Passenger-house and agent's residence.	21 x 80	Frame		700
Freight-house	21 x 50	Board		125
2 water tanks & pumps	20 x 30 dia.			700
Hand-car house	10 x 23			20
Passenger-house and freight ag't residence.	15 x 50	Frame	22 "	600
Hand-car house	12 x 25	Boards	22 "	15
Amount forward				2,910
Engine-house		Wooden	27 years	200
Water tank	28 ft. in dia.	Frame	4 "	300
Passenger-house	23 x 63	"	4 "	1,500
Telegraph office	19 x 24	Wooden	36 "	300

Schedule No.

County.	Township.	Descri Name of station.
	Calumet	Tolliston
	North	Gibson's
		Hammond

138 [Endorsed:] Return of Michigan Central Railroad Company. April 1, 1891. Received May 26th, 1891. J. O. Henderson, auditor of state.

STATE OF MICHIGAN, *Wayne County,* } ss:

H. B. Ledyard,* president, and D. A. Waterman, auditor, of the Michigan Central Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railroad company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

H. B. LEDYARD, *Pres't.**
D. A. WATERMAN, *Auditor.*

Subscribed and sworn to before me this 20 day of May, 1891.

†JOHN F. PEATERS,
Notary Public, Wayne County, Michigan.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

* General superintendent or general manager.

† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Freight-house	20 x 50	Boards	36 "	150
2 hand-car houses	12 x 14 each	"	36 "	30
Ice-house			36 "	10
Pump & pump-house		Frame		500
Agent's residence	24 x 24	"		400
Passenger-house	20 x 50	Frame	10 "	400
Target shed	7 x 11	Boards	10 "	10
" & tender's house	23 x 29	Frame	10 "	250
Hand-car shed	12 x 21	Board		15
Coal-shed	13 x 16	"		10
Vacated old pass'r-house	19 x 35	Frame	35 "	150
Water tank & pump				300
Passenger-house	20 x 50	Frame	15 "	600
Freight "	21 x 41	"	15 "	300
Hand-car "	11 x 12	Boards	15 "	20
Coal-shed	11 x 23			20
Total amount in county				$5,465

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual returns of the Michigan Central Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891, for the year 1891 as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

[L. S.] J. O. HENDERSON,
Auditor of State.

139 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

140 And thereupon the court sustained the objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

141 And thereupon the plaintiff, by its counsel, offered in evidence a copy of the return for the year 1891 of the Terre Haute and Logansport Railroad Company made to the auditor of state and duly certified by the auditor of state, said return being in the words and figures following, to wit:

142 Auditor's

(This blank to be filed with auditor

Annual Return of the Terre Haute and Logansport Railroad Company

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by required of railroad companies,

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Vigo	1	45	1,450		11	12	29,355
Parke	2	80	2,800	1,150	23	43	61,876
Montgomery	370	20	3,700	1,381	32	15	84,877
Boone	4	79	47			40	1,045
Clinton	251	49	2,510	807	22	01	58,112
Carroll	228	03	2,280	464	19	52	51,523
Cass	237	47	7,200	2,721	19	01	50,150
Fulton	220	77	2,200	390	18	14	47,913
Marshall	286	52	2,845	1,009	23	07	60,923
St. Joseph	173	06	15,997	915	13	72	36,236
Totals in State	2,197	33	41,029	8,837	182	57	482,010

form.

of state between April 1 and June 1.)

to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Terre Haute and Logansport Railroad Company on the 1st day of April, 1891, as according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
---	---	---	---	08	85	---	---	---	30,890
---	---	---	15	12	15,970	---	---	---	81,796
---	---	---	4	08	4,300	---	---	---	94,258
---	---	---	---	---	---	---	---	---	1,092
---	---	---	3	25	3,430	---	---	---	64,859
---	---	---	1	60	1,690	---	---	---	55,957
---	---	---	4	43	4,680	---	---	---	64,751
---	---	---	1	15	1,220	---	---	---	51,723
---	---	---	2	94	3,100	---	---	---	67,877
---	---	---	2	57	2,710	---	---	---	55,858
---	---	---	35	22	37,185	---	---	---	569,061

143 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the Terre Haute and Logansport Railroad Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	13	2,400	31,200
Locomotives, second class		10	1,200	12,000
Passenger cars, first class		4	1,200	4,800
Passenger cars, second class		4	750	3,000
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars				
Baggage, mail, or express cars		5	475	2,375
Box cars		350	150	52,500
Stock cars		2	150	300
Coal cars		579	130	75,270
Platform cars		14	115	1,610
Wrecking and camp cars				
Ice and refrigerator cars		17	150	2,550
Fast-freight-line cars				
Caboose cars		12	190	2,280
Tank or oil cars				
Pile-driving cars				
Push-cars		42	5	210
Hand cars		43	8	344
All other kinds of cars				
Total listed value of rolling stock				

Length of main track on which said rolling stock is used in Indiana	182 miles, 57 hund.
Length of main track on which said rolling stock is used elsewhere (describe such roads below)	— miles, — hund.
Total length of road	182 miles, 57 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. None.

Give name of express company doing business over your line. American Express Company.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. Wm. R. McKeen, Terre Haute, Indiana.

Give name and address of secretary of your company. Geo. E. Farrington, Terre Haute, Indiana.

Give name and address of gen'l manager or sup't of your company. None.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Wm. R. McKeen or Jno. G. Williams, Terre Haute, Indiana.

144 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Terre Haute and Logansport Railroad Company on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. Main, 2,816; side, 2,640.

State length of time road has been built. 22.42 miles, 31 years; 87 miles, 16 years; 44.80 miles, 8 years; 22.35 miles, 7 years.

State number miles of track laid with steel rail. 169.80 miles.

State number miles of track laid with iron rail. 12.77 "

State number miles of siding laid with steel rail. 3 "

State number miles of siding laid with iron rail. 32.13 "

State weight of iron and steel rail used in main track and sidings. Steel, 60 and 56 lbs.; iron, 56 lbs.

State kind of "joints" or "chairs" used. Angle bars and plain splice bars.

State proportion of ballast used on road. Rock, ——; gravel, 16397; dirt, ——; other material, cinders, 1860.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Terre Haute and Logansport Railroad Company on the 1st day of April, 1891, as required of railroad companies according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$500,000 00
Number of shares	10,000 00
Amount of capital stock paid up	500,000 00

Market value of stock per share, none.

Actual value of stock per share, nominal.

Indebtedness.

Amount of 1st-mortgage bonds, $500,000.00 on 93.48 miles and $1,000,000.00 on 66.09 miles.

Amount of 2d-mortgage bonds, $1,000,000.00 on 93.48 miles.

Amount of — mortgage bonds, ——.

Amount of — mortgage bonds, ——.

Total indebtedness, not including current expense for operating road, $1,964,795.24.

Current expense for operating road, ——.

Total listed valuation of all tangible property in this State, $——.

Earnings.

Gross earnings of entire road, as shown by last official report of company	$594,155 58
Net earnings of entire road, as shown by last official report of company	146,772 86
Gross earnings of miles of road within this State, as shown by last official report	594,155 58
Net earnings of miles of road within this State, as shown by last official report	146,772 86
Average annual net earnings per mile over entire line, as shown by last official report	803 92
Average annual gross earnings per mile over entire line, as shown by last official report	3,252 08

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

145 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water
pany, Situated upon the "Right of Way"

County.	Township.	Descri Name of station.
☞(A	rrange counties in alphabeti	cal order.)
Carroll	Demaerat	Cutler
	Monroe	Biringhurst
		Flora
	Jackson	Camden
Cass	Clinton	Clymers
	Eel	City of Logansport
Clinton	Center	Frankfort
	Owen	Marion
		Sedalia
	Perry	Town of Colfax
Fulton	Wayne	Grass Creek
	Union	Kewanna
	Auffeenaubee	Marshland
146 Marshall	Union	Marmont

No. 5.

Tanks, Other Buildings, Belonging to the Terre Haute and Logansport Railroad Com- of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	25 x 40	Frame	9 years	100
Tool-house	12 x 16	"	4 "	7
Depot	20 x 40	"	16 "	25
"	20 x 40	"	16 "	25
Water tank	16 x 16	"	8 "	100
Pump-house	20 x 20	"	8 "	15
Tool "	12 x 16	"	4 "	7
Depot	20 x 40	"	8 "	175
Tool-house	12 x 16	"	16 "	10
Total Carroll county				464 00
Tool-house	12 x 16	Frame	4 years	7
Depot	20 x 50	"	8 "	550
Freight-house	21 x 75	"	4 "	200
Round "	75 x 380	Stone	8 "	1,700
Water tank	16 x 20	Frame	8 "	100
Watch-house	6 x 6	"	7 "	5
"	6 x 6	"	2 "	5
Carpenter shop	20 x 50	"	4 "	20
Dwelling		"	— "	115
Tool-house	12 x 16	"	4 "	7
" "	12 x 16	"	4 "	7
Car repair	6 x 6	"	3 "	5
Total Cass county				2,721 00
Depot	18 x 49	Frame	7 years	400
Freight-house	18 x 40	"	17 "	25
Watch "	6 x 6	"	7 "	5
Tool "	12 x 16	"	16 "	10
Water tank	16 x 20	"	7 "	100
Pump-house	12 x 16	"	7 "	15
Coal "	10 x 16	"	5 "	10
Depot	20 x 40	"	16 "	50
Tool-house	12 x 16	"	4 "	7
Depot	16 x 24	"	17 "	25
Tool-house	12 x 16	"	15 "	10
Half depot			— "	150
Total Clinton county				807 00
Water tank	16 x 20	Frame	8 years	100
Depot	14 x 20	"	6 "	30
"	17 x 49	"	7 "	225
Tool-house	12 x 13	"	7 "	10
Depot	12 x 14	"	8 "	25
				390 00
Depot	17 x 49	Frame	7 years	350
Water tank	16 x 20	"	6 "	100

Schedule No.

	County.	Township.	Descri Name of station.
			Hibbard
		North	La Paz Junct.
		Center City	Plymouth
	Montgomery	Brown	Waveland
			Brown's Valley
		Union	New Market
			Crawfordsville Junct.
			Crawfordsville
		Franklin	Darlington
		Sugar Creek	Sugar Creek
		Union	City of Crawfordsville
147	Park	Florida	Rosedale
			Jessups'
		Raccoon	Catlin
		Adams	Sand Creek
		Washington	Judson
		Greene	Guion
		Adams	City of Rushville

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Pump-house	12 x 16	Frame	8 years	15
Water-closet	12 x 14	"	7 "	10
Tool-house	12 x 16	"	4 "	7
Dwelling		"	— "	50
Depot	26 x 36	"	4 "	100
Tool-house	12 x 16	"	4 "	7
Water-closet	6 x 6	"	3 "	5
Depot	26 x 34	"	4 "	100
Water-closet	6 x 6	"	3 "	5
Depot	23 x 60	"	7 "	250
Supply-house	10 x 12	"	6 "	10
Total Marshall county				1,009 00
Tool-house	12 x 16	Frame	4 years	7
" "	12 x 16	"	4 "	7
Depot	20 x 40	"	18 "	40
Dwelling	23 x 32	"	10 "	100
Water tank	16 x 16	"	10 "	65
Pump-house	20 x 20	"	13 "	10
Tool-house	12 x 16	"	4 "	7
Depot	16 x 40	"	2 "	200
Watch-house	6 x 6	"	7 "	5
R. M. office	16 x 20	"	10 "	25
Storehouse	20 x 25	"	9 "	25
Pump "	14 x 24	"	12 "	10
Freight "	20 x 40	"	17 "	75
Tool "	12 x 16	"	15 "	5
" "	12 x 16	"	15 "	5
Depot	16 x 56	"	1 "	250
Water tank	16 x 16	"	9 "	75
Pump-house	20 x 20	"	17 "	10
Sand "	12 x 24	"	13 "	10
Depot	18 x 49	"	7 "	350
Water tank	16 x 20	"	3 "	100
Total Montgomery county				1,381
Depot	16 x 40	Frame	6 years	175
Warehouse	30 x 75	"	30 "	30
Tool-house	12 x 16	"	27 "	5
Water tank	16 x 20	"	8 "	100
Pump-house	12 x 16	"	8 "	15
Coal "	10 x 14	"	8 "	5
Depot	11 x 14	"	7 "	15
Tool-house	12 x 16	"	15 "	5
Depot	16 x 24	"	7 "	15
"	20 x 40	"	18 "	75
Water tank	16 x 20	"	7 "	100
Pump-house	20 x 20	"	17 "	10
Depot	16 x 40	"	6 "	175
Tool-house	12 x 16	"	4 "	5
Depot	14 x 40	"	14 "	25
"	18 x 40	"	7 "	350
Freight "	22 x 60	"	3 "	30

Schedule No.

County.	Township.	Descri Name of station.
St. Joseph	Union Portage	Lakeville City of So. Bend

148 [Endorsed:] Return of Terre Haute and Logansport Railroad Company. April 1, 1892. Received June 19, 1891. J. O. Henderson, auditor of state.

STATE OF INDIANA, } ss:
Vigo County, }

John G. Williams, *general manager, and Geo. E. Farrington, secretary, of the Terre Haute and Logansport Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said rail — company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

JNO. G. WILLIAMS,
*Gen'l Manager.**
GEO. E. FARRINGTON.

Subscribed and sworn to before me this 17th day of June, 1891.
† HORACE M. SMITH,
Notary Public.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

* General superintendent or general manager.
† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Coal-house	14 x 16	Frame	6 years	10
Tool "	12 x 16	"	6 "	5
Total Park county				1,150 00
Depot	16 x 40	Frame	1 year	200
Engine-house	65 x 120	"	7 "	350
Supply "	16 x 24	"	7 "	40
Water tank	16 x 20	"	7 "	100
Oil-house	12 x 14	"	5 "	10
Depot		Brick		100
Freight-house	20 x 70	Frame	5 "	75
Water-closet	12 x 14	"	3 "	10
Freight-shed	12 x 100	"		25
Tool-house	12 x 14	"	2 "	5
Total St. Joseph county				915

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Terre Haute and Logansport Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891 for the year 1891, as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

[L. S.] J. O. HENDERSON,
Auditor of State.

149 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

150 And thereupon the court sustained the objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

151 And thereupon the plaintiff, by its counsel, offered in evidence a copy of the return for the year 1891 of the Evansville and Terre Haute Railroad Company made to the auditor of state and duly certified by the auditor of state, said return being in the words and figures following, to wit:

152 Auditor's

(This blank to be filed with auditor

Annual Return of the Evansville & Terre Haute Railroad Com

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by required of railroad companies,

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Main line:							
Vanderburgh	141	69		17,520	14	02	63,090
Gibson	234	90		4,850	25	45	114,525
Knox	277	48		2,725	28	98	130,410
Sullivan	240	23		1,775	24	95	112,275
Vigo	137	00		1,500	15	16	68,220
	1,031	30		$28,370	108	56	$488,520
Mt. Vernon branch:							
Gibson	82	91		100	11	41	28,525
Posey	240	51		1,650	25	61	64,025
	323	42		$1,750	37	02	$92,550
New Pittsburg branch:							
Sullivan	55	03		250	8	46	10,152
Clay	4	20					
	59	23		$250	8	46	$10,152
Jackson Hill branch:							
Sullivan	65	61			6	70	8,040
Totals in State	1,479	56		$30,370	160	74	$599,262

Note.

E. & T. H. R. R. Co.

Main track and side track valued to include the value of the right of way on the following basis:

Main line.

Main track valued at $4,500.00; side track at $1,200.00 per mile.

Mt. Vernon branch.

" " " " $2,500.00; side track at $750.00 " "

New Pittsburg and Jackson Hill branches.

Main track and side track valued at $1,200.00, as this is nothing more than mail-line siding.

form.

of state between April 1 and June 1.)

pany to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Evansville & Terre Haute Railroad Company on the 1st day of April, 1891, as according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
			9	26	11,112				91,722
			4	98	5,976				125,351
			6	49	7,788				140,923
			5	00	6,000				120,050
			7	87	9,444				79,164
			33	60	$40,320				$557,210
				94	705				29,330
			3	27	2,452				68,127
			4	21	$3,157				$97,457
			1	19	1,428				11,830
				56	672				672
			1	75	$2,100				$12,502
				98	1,176				9,216
			40	54	$46,753				$676,385

Main track and side track valued to include the value of the right of way on the following basis:

Main line.

Main track, 4,500.00; side track @ 1,200.00 per mile.

Mt. Vernon branch.

" " @ 2,500.00; side track @ 750 per mile.

New Pittsburg and Jackson Hill branch.

Main track and side track at $1,200.00, as this is nothing more than main-line siding.

153 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part by the Evansville and Terre Haute Railroad Company on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	6	2,000 00	12,000 00
Locomotives, second class		33	1,500 00	49,500 00
Passenger cars, first class		7	1,000 00	7,000 00
Passenger cars, second class		13	70 00	9,100 00
Pay cars				
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars				
Combination cars		2	300 00	60,000 00
Baggage, mail, or express cars		10	400 00	4,000 00
Box cars		1268	100 00	126,800 00
Stock cars		39	100 00	3,900 00
Coal cars		1337	75 00	100,275 00
Platform cars		285	75 00	21,375 00
Wrecking and camp cars		4	150 00	600 00
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars		15	100 00	1,500 00
Tank or oil cars				
Pile-driving cars				
Push-cars		18	5 00	90 00
Hand cars		24	10 00	240 00
All other kinds of cars		2	100 00	200 00
Total listed value of rolling stock				337,180 00

Length of main track on which said rolling stock is used in Indiana 160 miles, 74 hund.
Length of main track on which said rolling stock is used elsewhere (describe such roads below) — miles, — hund.

Total length of road 160 miles, 74 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Pullman Palace Car Co.

Give name of express company doing business over your line. Adams Express Company.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. David J. Mackey, Evansville, Indiana.

Give name and address of secretary of your company. Walter J. Lewis, Evansville, Indiana.

Give name and address of gen'l manager or sup't of your company. Geo. W. Saul, Chicago, Illinois.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Walter J. Lewis, sec'y, Evansville, Indiana.

154 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Evansville and Terre Haute Railroad Company on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,600.

State length of time road has been built. Main line, 39 years; Mt. Vernon br., 8 years; New Pittsburg br., 4 yrs.; J. Hill br., 1 yr.

State number miles of track laid with steel rail. Main line, 109 miles; Mt. Vernon br., 7.7 miles; New Pittsburg br., 8.46; J. Hill br., 6.70.

State number miles of track laid with iron rail. Mt. Vernon br., 30.6.

State number miles of siding laid with steel rail. ——.

State number miles of siding laid with iron rail. ——.

State weight of iron and steel rail used in main track and sidings. Steel, 50 to 60 lbs.; iron, 40 to 50 lbs.

State kind of "joints" or "chairs" used. Angle-bars, fish-plate, and chairs.

State proportion of ballast used on road: Rock, ——; gravel, ¾; dirt, ¼; other material, main line—

Mount Vernon branch, 37.02 mi. all dirt.
New Pittsburg " 8.46 " " "
Jackson Hill " 6.70 " " "

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the —— Rail- Company on the 1st day of April, 1892, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$3,000,000
Number of shares	60,000
Amount of capital stock paid up	50
Market value of stock per share	
Actual value of stock per share	
	3,855,000

Indebtedness.

Amount of 1st-mortgage bonds	
Amount of 2d-mortgage bonds	
Amount of — mortgage bonds	
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	8,733,399 29
Current expense for operating road	325,876 02
Total listed valuation of all tangible property in this State	9,059,275 31

Earnings.

Gross earnings of entire road, as shown by last official report of company	$1,019,142 74
Net earnings of entire road, as shown by last official report of company	170,177 40
Gross earnings of miles of road within this State, as shown by last official report	All in this State.
Net earnings of miles of road within this State, as shown by last official report	All in this State.
Average annual net earnings per mile over entire line, as shown by last official report	107 51
Average annual gross earnings per mile over entire line, as shown by last official report	6,071 58

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON, *Auditor of State.*

155 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water pany, Situated upon the "Right of Way"

County.	Township.	Name of station.	Descri
☞(Arrange counties in alphabetical order.)			
Gibson	Patoka	Princeton	
	Do.	"	
	White River	Patoka	
	Do.		
	Do.	Hazleton	
	Johnson	Ft. Branch	
	Do.	"	
	Do.	Haubstadt	
	Montgomery	Owensville	
Knox	Johnson	Decker	
	Do.	"	
	Vincennes	Vincennes	
	"	"	
	Busseron	Emison	
	"	Oaktome	
	"	"	
Posey (Mt. Vernon branch.)	Smith	Cynthiana	
	Center	Wadesville	
	Robb	Poseyville	
	Black	Mt. Vernon	
	"	" "	
Sullivan	Haddon	Carlisle	
	"	Papton	
	"	"	
	Hamilton	Sullivan	
	"	"	
	Curry	Shelburn	
	"	Farmersburg	
N. P. branch	Jackson	New Pittsburg	
J. Hill "	"	Hyniera	
Vanderburgh	Scott	Stacer	
	Pigeon	Evansville	
	"	"	
	"	"	
	"	"	
	"	"	
	"	"	

No. 5.

Tonks, Other Buildings, Belonging to the Evansville and Terre Haute Railroad Com- of said Road in —— County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Pass. house	As heretofore described	Brick	Old	1,500
Fr't "	"	Brick	"	1,000
Fr't & pass. —	"	Frame	"	200
Pump-house & tank	"	"	"	200
Fr't & pass. house	"	"	"	150
" " "	"	Brick	7 yrs.	1,500
Water station	"	Frame	4 "	200
Fr't & pass. house	"	"	Old	100
Do.	"	"	"	100
				4,950
Pass. house	"	Frame	Old	50
Watch "	"	"	"	25
Fr't sta.	"	Brick	"	2,250
Water "				100
Coal chute	"	Frame	"	100
Freight & pass. house	"	"	4 yrs.	75
" & " "	"	"	Old	100
Water sta.	"	"	1 year	25
				2,725
Freight & pass. house	As heretofore reported	Frame	Old	100
" " "	"	"	"	100
" " "	"	"	"	100
" " "	"	Brick	"	1,200
Water sta.	"	Frame	"	150
				1,650
F't & pass. house	"	"	"	100
" " "	"	"	"	75
Water station	"	"	"	100
Pass. house	"	"	"	1,200
Fr't "	"	"	"	100
F. & P. "	"	"	"	100
" & " "	"	"	"	100
" " "	"	"	"	150
Water sta.	20 x 14	"	"	100
				2,025
Pass. house	As heretofore reported	"	"	20
" "	"	Brick	"	7,000
Fr't-house	"	"	"	4,500
Round "	"	"	"	2,000
B'smith shop	"	"	"	750
Car "	"	"	"	750
Storehouse	"	"	"	750

Schedule No.

	County.	Township.	Descri Name of station.
		Pigeon	Evansville
		"	"
		"	"
		"	"
156	Vigo	Linton	Primints
		"	Near
		Harrison	Terre Haute
		"	" "
		"	" "
		"	" "

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Paint shop	As heretofore reported	Brick	Old	300
Warehouse	"	"	"	150
Mach. shops	"	"	"	1,000
Water tank	"	Frame	"	300
				17,520
Amount forward				28,870
Brought forward				28,870
F't & pass. house	As heretofore reported	Frame	Old	100
Water sta.	"	"	"	100
Fr't-house	"	Brick	"	1,000
Yard office	"	Frame	"	50
Tool-house	"	"	"	50
Coal "	"	"	"	200
				1,500
Total in all counties				30,370

157 [Endorsed:] Return of Evansville and Terre Haute Railroad Company. April 1, 1891. Received June 6th, 1891. J. O. Henderson, auditor of state.

STATE OF INDIANA, *Vanderburgh County,* } ss:

David Mackey,* president, and Walter J. Lewis, secretary, of the Evansville and Terre Haute Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railroad company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

D. J. MACKEY.
WALTER J. LEWIS, *Sec'y.*

Subscribed and sworn to before me this 10th day of June, 1891.

†GEO. B. WHEELER,
Notary Public.

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

STATE OF INDIANA:

OFFICE OF THE AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Evansville and Terre Haute Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891, for the year 1891 as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

J. O. HENDERSON,
Auditor of State.

158 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

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*General superintendent or general manager.

† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

159 And thereupon the court sustained the objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

160 And thereupon the plaintiff, by its counsel, offered in evidence the following portions of the printed official report of the State board of tax commissioners for the year 1891 (it being agreed in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which contain the assessment and valuation of the "railroad track" belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on April 1st, 1891, and of the "rolling stock" belonging to or leased, hired, used, or operated by said corporation on April 1st, 1891), to wit:

161 (From pages 188, 190, 196, 201, 206, and 211 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Clay county:														
Terre Haute & Indianapolis	13.81	$21,800	$301,058	.....	.....	.....	49.52	$3,500	$173,320	13.81	$9,800	$135,338	$3,465	$613,181
Hendricks county:														
Terre Haute & Indianapolis	19.65	21,800	428,370	.....	.....	.....	3.51	3,500	12,285	19.65	9,800	192,570	1,445	634,670
Marion county:														
Terre Haute & Indianapolis	9.17	21,800	199,906	.....	.....	.....	15.61	3,500	54,635	9.17	9,800	89,806	15,862	360,209
Putnam county:														
Terre Haute & Indianapolis	21.13	21,800	460,634	.....	.....	.....	7.18	3,500	25,130	21.13	9,800	207,074	2,170	695,008
Vigo county:														
Terre Haute & Indianapolis	16.14	21,800	351,852	.....	.....	.....	22.01	3,500	77,035	16.14	9,800	158,172	30,070	617,129

(From pages 184 and 186 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Terre Haute & Indianapolis	79.90	$21,800	$1,741,820	.....	.....	.....	97.83	$3,500	$342,405	79.90	$9,800	$783,020	$53,012	$2,920,257	$36,549

162 To the introduction of which evidence the defendants objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

163 And thereupon the court sustained said objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

164 And thereupon the plaintiff, by its counsel, offered in evidence the following portions of the printed official report of the State board of tax commissioners for the year 1891 (it being agreed in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which contain the assessment and valuation of the "railroad track" belonging to or controlled by the Michigan Central Railroad Company on April 1st, 1891, and of the "rolling stock" belonging to or leased, hired, used, or operated by said corporation on April 1st, 1891), to wit:

(From pages 188, 199, 200, and 205 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each:	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
La Porte county:														
Michigan Central	8.96	$18,000	$161,280	8.96	$10,000	$89,600	18.58	$3,500	$65,030	8.96	$4,100	$36,736	$20,765	$373,411
Lake county:														
Michigan Central	16.41	18,000	295,380	16.41	10,000	164,100	8.49	3,500	29,715	16.41	4,100	67,281	5,465	561,941
Porter county:														
Michigan Central	17.04	18,000	306,720	17.04	10,000	170,400	5.43	3,500	19,005	17.04	4,100	69,864	2,910	568,899

(From pages 184 and 185 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile	Total.	Miles.	Per mile.	Total.			
Michigan Central	42.41	$18,000	$763,380	42.41	$10,000	$424,100	32.50	$3,500	$113,750	42.41	$4,100	$173,881	$29,140	$1,504,251	$35,469

166 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

167 And thereupon the court sustained said objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

168 And thereupon the plaintiff, by its counsel, offered in evidence the following portions of the printed official report of the State board of tax commissioners for the year 1891 (it being agreed in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which contain the assessment and valuation of the "railroad track" belonging to or controlled by the Terre Haute and Logansport Railroad Company on April 1st, 1891, and of the "rolling stock" belonging to or leased, hired, used, or operated by said corporation on said April 1st, 1891), to wit:

169 (From pages 188, 189, 190, 191, 194, 202, 203, 204, 208, and 211 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles	Per mile.	Total.	Miles.	Per mile.	Total.		
Boone county:														
Terre Haute & Logansport	.40	$12,700	$5,080							.40	$2,100	$840		$5,920
Carroll county:														
Terre Haute & Logansport	19.52	12,700	247,904				1.50	3,000	4,800	19.52	2,100	40,992	770	294,466
Cass county:														
Terre Haute & Logansport	19.01	12,700	241,427				4.43	3,000	14,290	19.01	2,050	39,921	5,450	300,988
Clinton county:														
Terre Haute & Logansport	22.01	12,700	279,527				3.25	3,000	9,750	22.01	2,100	46,221	810	336,308
Fulton county:														
Terre Haute & Logansport	18.14	12,700	230,378				1.15	3,000	3,450	18.14	2,100	38,094	820	272,742
Marshall county:														
Terre Haute & Logansport	23.07	12,700	292,989				2.94	3,000	8,820	23.07	2,100	48,447	1,015	351,271
Montgomery county:														
Terre Haute & Logansport	32.15	12,700	408,305				4.08	3,000	12,240	32.15	2,100	67,515	1,390	489,450
Parke county:														
Terre Haute & Logansport	23.43	12,700	297,561				15.12	3,000	45,360	23.43	2,100	49,203	2,610	394,734
St. Joseph county:														
Terre Haute & Logansport	13 72	12,700	174,244				2 57	3,000	7,710	13.72	2,100	28,812	915	211,681
Vigo county:														
Terre Haute & Logansport	11.12	12,700	141,224				.08	3,000	240	11.12	2,100	23,352		164,816

(From pages 184 and 186 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Terre Haute & Logansport	182.57	$12,700	$2,318,639				35.22	$3,000	$105,660	182.57	$2,100	$383,397	$13,780	$2,821,476	$15,454

170 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

171 And thereupon the court sustained said objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

172 And thereupon the plaintiff, by its counsel, offered in evidence the following portions of the printed official report of the State board of tax commissioners for the year 1891 (it being agreed in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which contain the assessment and valuation of the "railroad track" belonging to or controlled by the Evansville and Terre Haute Railroad Company on April 1st, 1891, and of the "rolling stock" belonging to or leased, hired, used, or operated by said corporation on April 1st, 1891), to wit:

(From pages 188, 190, 194, 198, 205, 209, 210, and 211 of said report.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Clay county:														
Evansville & Terre Haute							.56	$1,500	$1,960					$1,960
Gibson county:														
Evansville & Terre Haute	36.89	16,400	604,594				5.92	3,500	20,720	36.86	6,500	239,590	10,700	875,514
Knox county:														
Evansville & Terre Haute	28.98	16,400	475,272				6.49	3,500	22,715	28.98	6,500	188,370	3,975	690,332
Posey county:														
Evansville & Terre Haute	25.61	16,400	420,004				3.27	3,500	11,445	25.61	6,500	166,465	1,650	599,564
Sullivan county:														
Evansville & Terre Haute	40.11	16,400	657,804				7.17	3,500	25,095	40.11	6,500	260,715	2,025	945,639
Vanderburgh county:														
Evansville & Terre Haute	14.02	16,400	229,928				9.26	3,500	32,410	14.02	6,500	91,130	28,250	381,718
Vigo county:														
Evansville & Terre Haute	15.16	16,400	248,624				7.87	3,500	27,545	15.16	6,500	98,540	1,500	376,209

(From pages 184 and 185 of said report.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Evansville & Terre Haute	160.74	$16,400	$2,636,136				40.51	$3,500	$141,890	160.74	$6,500	$1,044,810	$48,100	$3,870,936	$24,081

174 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

175 And thereupon the court sustained said objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

176 And thereupon the plaintiff, by its counsel, introduced in evidence the lease of the plaintiff's railroad property from the plaintiff to the Pennsylvania Company, dated December 28th, 1878 (it being agreed between the parties in open court that said lease was duly executed and delivered on the date thereof, and is and since January 1st, 1879, has been in full force and effect, and that the following is a true copy thereof, and that the following copy thereof may be introduced in evidence with the same force and effect as though said copy were the original of said lease), said lease being in the words and figures following, to wit:

177 This indenture, made the twenty-eighth day of December, one thousand eight hundred and seventy-eight, between the Indianapolis and Vincennes Railroad Company, first party, and the Pennsylvania Company, second party, is in witness:

Whereas, the first party is a corporation of the State of Indiana, owning a line of railroad between the cities of Indianapolis and Vincennes, in said State; and,

Whereas, the second party is a corporation of the State of Pennsylvania, having authority to lease and operate railroads in the State of Pennsylvania and elsewhere; and,

Whereas, it is deemed to be for the mutual benefit of the parties hereto that the railroad of the first party shall be operated and controlled by the second party.

Now, therefore, know all men by these presents, that for and in consideration of the covenants hereinafter set forth, it is hereby agreed between the parties hereto as follows, to wit:

Article first. That the first party has demised and leased and by these presents doth grant, demise and lease unto the second party, its successors and assigns, the entire railroad of the first party, from its northern terminus in the city of Indianapolis to its southern terminus in the city of Vincennes, in the State of Indiana, together with all the depots, stations, buildings, locomotive engines, cars and other appurtenances and property real and personal, to said demised railroad belonging and appertaining, as well *as* that now owned as that hereafter to be acquired by the first party, together with all franchises of said first party that may, in the judgment of the second party, be requisite and necessary to the use, enjoyment
178 and operation of said railroad and property.

To have and to hold the said demised railroad, property, appurtenances and franchises unto the said second party, its successors and assigns, for the term of ninety-nine years from and

after the first day of January, 1879, unless the same shall be sooner terminated as hereinafter provided.

Article second. The first party hereby further covenants and agrees that the second party shall at all times during the term aforesaid, have full and exclusive power, right and authority to use manage and operate the said railroad and property; to charge, collect and receive such tolls as the second party may from time to time establish, and such rents, issues and profits as may lawfully arise from the possession and operation of said demised premises as exclusively and fully as the same might or could have been used exercised and enjoyed by said first party had this lease not been made.

Article third. It is hereby mutually agreed between the parties that an inventory and appraisement shall be made of the locomotive engines, cars, fuel, materials, supplies and other movable property used in connection with the said demised railroad and owned by the first party at the time this lease goes into operation, and that at the termination thereof the second party shall return to the first party the property designated in such inventory; to the extent therein named and in similar condition; it being understood and agreed that the current assets and the fuel, materials and other supplies used in the operation of said railroad, shall be transferred to said second party for use in meeting the current liabilities of said second party existing at the date of transfer.

179 Article fourth. The second party hereby covenants and agrees that it will at all times during the continuance of this lease operate and keep in public use the said railroad and its appurtenances and that it will set apart and furnish for the use of said railroad a number of locomotive engines and cars, sufficient in its judgment to fully accommodate the business thereof, the second party receiving therefor, in addition to the cost of maintaining, repairing and perpetuating the same, a compensation for the use of such engines and cars, at the rate of six per centum per annum on the estimated cash market value of the same at the time they are so placed on said railroad for use.

It being further understood, that the compensation for the use of engines and cars owned and furnished by the second part, and not specifically set apart for use on said road, shall not be included in the value of equipment upon which six per centum is to be allowed for use as aforesaid; but that a charge per engine and per car per mile for all engines and cars so used upon said railroad shall be made by said second party, which charge shall not excede the rate paid by said second party to other railroad companies for similar service.

Article fifth. The second party further covenants that it will apply the tolls, rents, income and profits arising out of the use and operation of said demised premises, or so much thereof as may necessary to the payment of the cost of operating repairing machinery maintaining and perpetuating said railroad and property for public use, including premiums for insurance, rental of equipment, as hereinbefore provided, and all State and National taxes and assess-

ments, now or hereafter lawfully levied or assessed thereon,
180 and will pay over the residue to the party of the first part to be applied to the payment of interest on its mortgage bonds or other obligations, according to the priority of the same.

Article sixth. The second party hereby assumes and covenants to faithfully perform and discharge the duties and obligations which have been incurred by the first party in all contracts heretofore made between said first party and various corporations and persons, only in respect to the operation, maintenance or use of said demised premises, or any part thereof.

Article seventh. The said second party shall and will at all times keep said demised railroad and property in good order and repair, and will, at the expiration of the hereby demised term, or other sooner determination of this lease and contract, yield and deliver up the hereby demised railroad and property and appurtenances in the same good order and repair that the same are now in, or may be put in during the hereby demised term, reasonable wear and tear excepted.

Article eighth. That the second party shall keep accurate account of all the business, receipts and revenues arising from the said demised property, and the books relating thereto shall be subject to the examination of the president of the first party, or any agent duly authorized by said first party to examine the same; and the second party shall furnish to the first party monthly accounts of all the gross earnings and expenses.

Article ninth. It is hereby further mutually agreed that this lease may be terminated at any time, under such terms as the respective boards of directors of the parties hereto may order and direct.
181 Article tenth. If any difference shall arise in relation to this lease and contract between the parties hereto, each shall select a referee of experience and skill in railroad management, and the said referees shall select another of like experience and skill and the three so chosen shall hear and decide such differences, and the decision of a majority of the referees shall be final and conclusive upon the parties hereto.

In witness whereof, the said parties have hereunto affixed their respective common or corporate seals, duly attested, the day and year first hereinbefore written.

THE INDIANAPOLIS AND VINCENNES RAILROAD CO.,
By WILLIAM THAW, *Vice-President.*

[Seal I. & V. R. R. Co.]

Attest:
FRANK SAMPLE, *Secretary.*

THE PENNSYLVANIA COMPANY,
By J. N. McCULLOUGH, *First Vice-President.*

[Seal Penna. Co.]

Attest:
JNO. C. COON,
Assistant Secretary.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

Before me, William F. Robb, a commissioner for the State
182 of Indiana in Pittsburgh, Pennsylvania, personally appeared the within-named Wm. Thaw, vice-president of the Indianapolis and Vincennes Railroad Company, and acknowledged the signing and ensealing with the corporate seal of said company of the within lease and contract to be his voluntary act and deed as vice-president of said company and the voluntary corporate act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this thirtieth day of December, 1878.

[SEAL.] WILLIAM F. ROBB,
Commissioner for Indiana in Pittsburgh, Pa.

STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

Before me, William F. Robb, a commissioner for Indiana in and for said county, personally appeared the within-named J. N. McCullough, first vice-president of the Pennsylvania Company, and acknowledged the signing and ensealing with the corporate seal of said company of the within lease and contract to be his voluntary act and deed as first vice-president of said company and the voluntary corporate act and deed of said company.

In witness whereof I have hereunto set my hand and affixed my official seal this thirtieth day of December, 1878.

[SEAL.] WILLIAM F. ROBB,
Commissioner for Indiana in Pittsburgh, Pa.

183 And thereupon the plaintiff, to further sustain the issue on its part, offered the following evidence:

J. T. BROOKS, being duly sworn, on his oath testified as follows:

I am and for nearly two years last past have been second vice-president and general counsel of the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and for about ten years prior thereto was general counsel for the Pennsylvania Company and the railway corporations consolidated into the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company. During said time when I was general counsel as aforesaid I had general knowledge of all the transactions of the said companies in respect to the purchase, sale, lease, and operation of the various lines of railway in Indiana, Ohio, and other States, and since I became second vice-president of said Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company I have had the immediate charge and direction of all the negotiations of the said companies with respect to the purchase, sale, lease, and operation of various lines of railway in Indiana, Ohio, and

other States, and have had immediate and familiar knowledge of the cost of constructing, maintaining, and operating the lines of railway constructed, maintained, and operated by the said companies in the State of Indiana and other States, and have been familiar with estimating the value of railroad properties as determined by the cost of construction and equipment, the market value of the stocks and bonds, and the gross and net earnings, and all other matters affecting their value.

184 During the years 1890 and 1891 I was acquainted with and knew the values of all the property belonging to, leased, hired, used, operated, or controlled by the plaintiff corporation included within the description of "railroad track" and "rolling stock," as the same are defined by the statutes of Indiana.

And thereupon plaintiff, by its counsel, propounded to the witness the following question:

Q. "Considering the cost of the construction and equipment of the Indianapolis and Vincennes railroad, the market value of the stocks and bonds, and the gross and net earnings of the plaintiff corporation, and all other mattters affecting the value of plaintiff's property denominated 'railroad track' and 'rolling stock,' as hereinafter defined, what, in your opinion, was the true cash value on the first day of April, 1890 (by which is meant the price that could have been obtained at private sale and not at forced or auction sale), of the railroad track (by which is meant right of way, including superstructure, main, side, or second track, turnouts, turn-tables, telegraph poles, wires, instruments, and other appliances, and the stations and improvements on right of way, excepting machinery, stationary engines, and other fixtures) belonging to or controlled by the plaintiff corporation on said date, and of the 'rolling stock' belonging to or leased, hired, used, or operated by the plaintiff corporation on said date in each of the counties through or into which the line of said railroad extended on said date, and the aggregate of said values in the whole State of Indiana?"

185 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

186 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

187 Counsel for plaintiff thereupon stated that they proposed to prove by the witness, in answer to the question propounded, that the true cash value, as defined by the question, on the first day of April, 1890, of the "railroad track," as defined by the question, belonging to or controlled by the plaintiff corporation on said date, and of the "rolling stock" belonging to, leased, hired, used, or operated by the plaintiff corporation on said date, in each of the counties of the State of Indiana through or into which the line of said railroad extended on said date, was as follows:

In Marion county	$195,885 00
In Hendricks county	10,380 00
In Owen county	156,520 00
In Morgan county	172,190 00
In Monroe county	10,760 00
In Greene county	195,885 00
In Sullivan county	12,565 00
In Knox county	179,560 00

And that the aggregate of said values on said date was $811,230.00.

188 To which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which said testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and in refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

189 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "Considering the cost of the construction and equipment of the Indianapolis and Vincennes railroad, the market value of the stocks and bonds, and the gross and net earnings of the plaintiff corporation, and all other matters affecting the value of the plaintiff's property denominated 'railroad track' and 'rolling stock' as hereinafter defined, what, in your opinion, was the true cash value on the first day of April, 1891 (by which is meant the price which could have been obtained at private sale and not forced or auction sale), of the 'railroad track' (by which is meant right of way, including superstructures, main, side, or second track, turnouts, turntables, telegraph poles, wires, instruments, and other appliances, and stations and improvements on rights of way, excepting machinery, stationary engines, and other fixtures) belonging to or controlled by the plaintiff corporation on said date, and of the 'rolling stock' belonging to or leased, hired, used, or operated by the plaintiff corporation on said date, in each of the counties through or into which the line of said railroad extended on said date, and the aggregate of said values in the whole State of Indiana?"

To which question the witness made the following answer, to wit:

190 A. "The true cash value on the first day of April, 1891, as defined by the question, of the 'railroad track,' as defined by the question, belonging to or controlled by the plaintiff corporation on said date, and of the 'rolling stock,' as defined by the question, belonging to or used, leased, hired, or operated by the plaintiff corporation on said date, in each of the counties through or into which the line of said railroad extended on said date was, in my opinion:

In Marion county	$195,885 00
In Hendricks county	10,380 00
In Owen county	156,520 00
In Morgan county	172,190 00
In Monroe county	10,760 00
In Greene county	195,885 00
In Sullivan county	12,565 00
In Knox county	179,560 00

And the aggregate of said values in the whole State of Indiana was $811,230.00.

191 And thereupon counsel for plaintiff propounded to the witness the following question, to wit:

Q. "State whether the plaintiff corporation or its lessee, the Pennsylvania Company, or any officer, agent, or representative of either of said corporations, had any notice whatever of the assessment and valuation of the plaintiff's railroad made by the State board of tax commissioners of Indiana at its session in 1891, after said assessment and valuation was made by said board and before the final adjournment of said board."

To which question the witness made the following answer, to wit:

A. "The plaintiff corporation did not, and neither did its lessee, the Pennsylvania Company, nor any officer, agent, or representative of either of said corporations, have any notice whatever of the assessment and valuation of the plaintiff's railroad, as made by the State board of tax commissioners for the year 1891, after the assessment and valuation was so made by said board, on the 8th day of September, 1891, and before the final adjournment of said board on the 11th day of September, 1891."

192 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State whether the plaintiff corporation or its lessee, the Pennsylvania Company, by any officer, agent, or representative of either of said corporations, was before the State board of tax commissioners, during its session for the year 1891, concerning the taxation of the 'railroad track' and 'rolling stock' of the plaintiff corporation at any other time than on the 25th day of August, 1891, as shown by the report of the proceedings of said board, and whether at said time or at any other time during the session of the State board in the year 1891 the State board notified the plaintiff or its lessee, the Pennsylvania Company, or any officer, agent, or representative of either of said corporations, or gave to either of said corporations any knowledge or intimation of the assessment and valuation of the railroad of the plaintiff corporation which the said board proposed and intended to make."

To which question the witness made the following answer, to wit:

A. "No officer, agent, or representative of the plaintiff or of its lessee, the Pennsylvania Company, was before the State board of tax commissioners, during its session in the year 1891, concerning the valuation and assessment of the 'railroad track' and 'rolling

stock' of the plaintiff corporation, except on August 25, 1891, as shown by the report of the proceedings of said board, and neither at that time nor at any other time during the session of said board did the board give to the plaintiff or to its lessee, the Pennsylvania Company, or to any officer, agent, or representative of either
193 of said corporations any notice, knowledge, or intimation whatever of the assessment of the railroad of plaintiff corporation, which said board proposed and intended to make."

194 H. B. DU BARRY, being duly sworn, on his oath testified as follows:

I am the assistant engineer of the Pennsylvania Company, and have held this position for several years past. As such officer I have had charge of all matters pertaining to the valuation and taxation of the property of the plaintiff corporation.

As assistant engineer it is my duty to attend to the making of all returns, statements, and explanations made on behalf of the plaintiff to the taxing officers and tribunals having jurisdiction to value and assess the property of the plaintiff for taxation.

And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "Did you in pursuance of your duties in this respect, prior to the assessment and valuation by the State board of tax commissioners of railroad property in 1891, prepare and deliver to the State board of tax commissioners or to any person or officer for delivery to said board any written statement of facts bearing upon the assessment and valuation for taxation of the 'railroad track' and 'rolling stock' of the plaintiff other than the return required by law to be made by the plaintiff corporation to the auditor of State, or any written statement in connection with or in explanation of said return? And if you made such written statement, please produce a copy of it and put it in evidence as part of your answer to this question."

To which question the witness made the following answer, to wit:

195 A. On August 22, 1891, in pursuance of my duties as assistant engineer of the plaintiff corporation and on behalf of the plaintiff corporation, I prepared a written statement of facts bearing upon the valuation and assessment for taxation of the 'railroad track' and 'rolling stock' of the plaintiff in Indiana, which statement contained not only facts in addition to those stated in the annual return of the plaintiff for 1891, made to the auditor of State as required by law, which was then in the hands of the State board of tax commissioners, but also facts in explanation and correction of said return, and said written statement was delivered by me to the State board of tax commissioners on August 25th, 1891. Said written statement was in the words and figures following, to wit:

196 PITTSBURGH, PA., *Aug.* 22, 1891.

To the honorable board of tax commissioners for the State of Indiana, Indianapolis, Ind.

GENTLEMEN: I represent the P., C., C. & St. L. R'y Co. and the I. & V. R. R. Co. The P., C., C. & St. L. R'y Co. is a new corporation since the last meeting of this board, having a length of 1,085.03 miles in the States of Pennsylvania, West Virginia, Ohio, Indiana, and Illinois. The said railway is by consolidation composed of the P., C. & St. L. R'y, 213.78 miles, entirely outside of Indiana; the C., St. L. & P. R. R., having 135.88 miles in Ohio, 27.99 miles in Illinois, and 417.11 miles in Indiana, with a total *el*ngth of 580.98 miles; the Cincinnati and Richmond railroad, having 59.96 miles in Ohio and 7.96 miles in Indiana, with a total length of 67.92 miles; and of the J., M. & I. R. R., having a length of 222.35 miles, all in Indiana.

197 The following table shows the gross earnings of the P., C., C. & St. L. R'y Co. for 1890, by divisions, together with its length and per cent. of gross earnings in and out of Indiana—total length, 1,085.03:

	Length outside of Indiana.	Per cent. of length outside of Indiana.	Length in Indiana.	Per cent. of length in Indiana.	Gross earnings.	Gross earnings per mile.	Per cent. of gross earnings outside of Ind.	Per cent. of gross earnings in Ind.
P'g'h div.	213.78	19.70	0.00	----	6,275,560	29,153	40.61	
Ind. "	115.30	10.63	71.81	6.62	3,047,930	12,561	14.79	4.93
Ch'go "	48.57	4.47	242.60	22.36	3,116,192	10,702	4.44	15.73
Rich. "	59.96	5.53	108.69	10.02	1,178,606	6,652	2.82	4.81
Lou. "	0.00	----	222.35	20.49	1,834,643	8,146	----	11.87
Cin'ti "	----	----	1.97	0.18				
	437.61	40.33	647.42	59.67	15,452,931	13,502	62.66	37.34

The Pittsburgh division extends from Pittsburgh, Pa., to Columbus, Ohio.

The Indianapolis division extends from Columbus, Ohio, to Indianapolis, Ind.

The Chicago division extends from Bradford Junct., O., to Chicago, Ills., with a branch from Logansport, Ind., west to the Ills. State line.

The Richmond division extends from Redcomb Junction (7 miles east of Cincinnati, O.) to Anoka Junction, Indiana.

198 The Louisville division, main line, extends from Indianapolis, Ind., to Jeffersonville, Ind., including the New Albany and Jeffersonville branches, together with the Madison branch from Columbus, Ind., to Madison, Ind., and the Cambridge branch from Columbus, Indiana, to Cambridge City, Indiana.

The Cincinnati division (that part owned by the P., C., C. & St. L.

R'y Co.) extends from the Ohio State line west to a junction with the Richmond division, all in Wayne county, Indiana.

From the above it will appear that the P., C., C. & St. L. R'y has a length of 437.61 miles outside of the State of Indiana, or 40 per cent. of its total length; while its earnings, computed from the best obtainable source, show that the 437.61 miles outside of the State have a gross earnings of 62.66 per cent. of its total earnings, thereby showing that its greatest earning power is outside of the State, and it would be unfair and unjust to compute its earning capacity by taking the result as shown in the report required by the authorities of Indiana, to wit, "its average gross earnings per mile over the entire line." This result, as given in the annual return to the State auditor, is $13,502 per mile; but if we take the result as given by the above table, it will be seen that its average gross earnings in Indiana is $8,912 per mile, and not $13,502.

This result I have for 15 years and over, by other forms of argument, endeavored to impress upon former boards, and I present it at this time in a form that I think will convey to you a different idea from what you have heretofore entertained.

199 Regarding rolling stock you will receive for the year 1891 a very large addition to the amount heretofore returned. This is brought about by the consolidation with our lines outside of Indiana, where the larger part has heretofore been owned. This consolidation will take from Ohio and other States a valuation of, say, $900,000, which will be added to Indiana.

It has been the custom of this company for years past to ascertain the actual value of rolling stock, based upon the value fixed by the master mechanics and master car-builders' associations, who take the prime cost and reduce a percentage for each year of age. Of this value so ascertained 60 per cent. has been returned by this company, and the rule has been followed for year 1891.

The State board heretofore has increased the value so ascertained so that it represents a value of 71 per cent. of its actual value. This should be taken into consideration when you fix the value for 1891.

The following table shows the valuation per mile of main track of the different divisions of the P., C., C. & St. L. R'y in Indiana as they should have been for the year 1890, in my opinion, based upon an experience of 17 years engaged in the occupation of looking after the tax interests of my road:

200	Ind'p'l's div.	71.81	miles at	$13,000	$933,530
	Ch'go " (main line)	182.41	" "	10,000	1,824,100
	" " (branch)	60.19	" "	5,000	300,950
Rich.	div.	108.69	" "	8,000	869,520
Cin'ti	"	1.97	" "	8,000	15,760
Lou.	" (main line)	114.41	" "	10,000	1,144,100
		539.48	av'g	9,431	$5,087,960
Lou.	" (branches)	107.94	at	4,000	431,760
		647.62	av'g	$8,526	$5,519,720

This 539.48 miles of main track were assessed in 1890 at different rates, averaging $10,781 per mile, and the 107.94 miles of branch track were assessed in 1890 at $4,500 per mile. These results would show that the main track was assessed at the rate of $1,350 per mile for the main line and $500 per mile for the branches more than their true values, making a total over assessment of $782,368. In this I particularly refer to the assessment of the Louisville division, the old J., M. & I. R. R. In 1890 the main line of this road was reduced from $11,000 per mile to $10,000, and in 1890, without any just cause or reason, it was increased to $12,000 per mile. This fact I desire to impress upon the board on account of its unfairness.

I would here insert that the average net earnings per mile, based upon the table above, would be $2,306 per mile, from which is to be deducted the fixed charges on the bonded indebtedness.

In making the assessment for the year 1891, it is presumed that you will follow the precedent existing since 1873 and place a value of the main track on the main lines at a uniform rate and on the branches, such as the Madison and Cambridge branches of the J., M. & I. R. R., at a reduced rate.

201 The rolling stock should, as has been set by precedent and by statute, be assessed at a uniform rate per mile on the main lines and branches.

Permit me here to call your attention to the fact all real estate in Indiana is assessed once every six (6) years, and that railroad property, of all character, is assessed every year, and that I cannot, under these circumstances, see why, at the end of the six (6) years term, if you find that real estate is more valuable than it was six years before, that you should think that railroad property should be increased in the same proportion. You should realize the fact that railroad property is liable to increase or decrease yearly, and that the value of our system of railroads has been increased by the board over twenty (20) per cent. since 1885.

Regarding the Indianapolis and Vincennes railroad, but little can be said, except that its earning capacity is very low—scarcely worth noticing. The financial result for the year ending December 31st, 1890, shows the expenses for operating the road was 85½ per cent. of its gross earnings, thereby leaving out of the 14½ per cent. of net earnings, amounting to $66,690, a deficit of $136,430 to meet the fixed charges on the bonded debt. Further, it shows that it owes $2,284,083 for advances in the past 21 years to meet its fixed obligations. Such facts need no comment; they tell a very plain tale of a bad investment, and I can see no good reason why the valuation should be increased for the year 1891 over what it was for 1890.

Respectfully submitted.

(Signed) H. B. DU BARRY,
Assistant Engineer.

202 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "Was this statement true as to the facts stated therein?"

203 To which question the defendant at the time objected for the reason:

1st. That said evidence is irrelevant and immaterial.

2nd. That it is apparent that the statement of the witness is mere hearsay.

3rd. That it is not competent for the witness to prepare a statement containing numerous separate and distinct facts and then attempt to make evidence by testifying that the statement so made is true.

204 And thereupon the court overruled said objection; to which ruling of the court in overruling said objection the defendants, by their counsel, at the time excepted.

And thereupon the witness made the following answer, to wit:

A. "It was."

205 ALEXANDER MCELEVEY, being duly sworn, on his oath said:

"I am and for three years last past have been the assistant comptroller of the Pennsylvania Company, and for the ten years prior to becoming assistant comptroller I was an employé in the comptroller's office of said company and had access to and was familiar with the books of said company with reference to the operation of the Indianapolis and Vincennes railroad, showing the stock, bonds, and all indebtedness of the plaintiff corporation and the receipts and expenses connected with the operation of said line of railroad, and during all of said time was familiar with the financial condition of the plaintiff corporation."

206 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State what was the amount of the capital stock of the plaintiff corporation outstanding on the first day of April, 1891."

To which question the witness made the following answer, to wit:

A. "The amount of capital stock of the plaintiff corporation outstanding on the first day of April, 1891, was one million four hundred and two thousand dollars ($1,402,000)."

207 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State what was the amount of the bonded indebtedness of the plaintiff corporation outstanding on April first, 1891, and of what it consisted, and what rate of interest it bore."

To which question the witness made the following answer, to wit:

A. "The total bonded indebtedness of the plaintiff corporation on April 1st, 1891, was three million one hundred and two thousand dollars ($3,102,000) of first-mortgage bonds, bearing interest at the rate of seven (7) per cent. per annum, and one million four hundred and two thousand dollars ($1,402,000) of second-mortgage bonds, bearing interest at the rate of six (6) per cent. per annum."

208 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "What other indebtedness had the plaintiff corporation on said date, and of what did it consist?"

To which question the witness made the following answer, to wit:

A. "Two million two hundred and eighty-four thousand and eighty-three dollars and twenty-two cents ($2,284,083.22) on account of advances made by the Pennsylvania Company, lessees, to meet the annual deficits between the amount of the net earnings and the fixed charges during the time the plaintiff railroad has been under lease and operated by the Pennsylvania Company."

209 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State what were the gross earnings, operating expenses, net earnings, fixed charges, deficit, if any, and amount advanced by the Pennsylvania Company to meet such deficit, if any amount was so advanced, for the fiscal year of the plaintiff corporation next preceding the first day of April, 1891."

To which question the witness made the following answer, to wit:

A. "For the fiscal year of the plaintiff corporation next preceding the first day of April, 1891, which ended on December 31st, 1890, the gross earnings were four hundred and fifty-nine thousand six hundred and six dollars and sixty-six cents ($459,606.66); the operating expenses were three hundred and ninety-four thousand four hundred and eighty dollars and thirteen cents ($394,480.13); the net earnings were sixty-five thousand one hundred and twenty-six dollars and fifty-three cents ($65,126.53); the fixed charges were two hundred and twenty-five thousand nine hundred and seventy-four dollars and seventy-four cents ($225,974.74), leaving a deficit which was advanced by the Pennsylvania Company of one hundred and sixty thousand eight hundred and forty-eight dollars and twenty-one cents ($160,848.21)."

210 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State, if you know, what were the amounts of the gross earnings, the operating expenses, the net earnings, the fixed charges, the deficit, if any, and the amount advanced by the Pennsylvania Company to meet such deficit, if any amount was advanced by said company for that purpose, for each fiscal year of the company for a period of ten years next preceding the year 1890."

211 To which question the defendant objects for the reason—

1st. That the evidence sought to be elicited is irrelevant and immaterial.

2nd. That it is apparent that the answer of the witness must be based upon reports and statements made to him by others, and therefore hearsay.

3rd. That said evidence, if admitted, does not in anywise tend to support the averments of the complaint.

212 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

213 And thereupon plaintiff, by its counsel, stated that it proposed to prove by the witness, in answer to the question, the following facts, to wit:

214 For the year 1880 the gross earnings, operating expenses, net earnings, fixed charges, deficit, and amounts advanced by the Pennsylvania Company to the plaintiff corporation were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$339,420 53	$282,004 32	$57,416 21	$206,000 79	$148,583 00	$148,583 79

For the year 1881 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$339,738 76	$332,924 52	$6,814 24	$206,000 00	$199,185 76	$194,185 70

For the year 1882 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$342,982 75	$326,330 49	$16,652 26	$206,000 00	$189,347 74	$169,347 74

For the year 1883 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$314,628 10	$330,497 81	$15,869 71	$206,000 00	$221,869 71	$221,869 70

(Net earnings, none. Net earnings column shows excess of expenses.)

For the year 1884 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$312,533 22	$325,435 16	$12,901 94	$206,000 00	$218,901 94	$218,901 94

(Net earnings, none. Net earnings column shows excess of expenses.)

For the year 1885 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$318,231 85	$327,376 27	$9,144 42	$206,000 00	$215,144 42	$210,144 42

(Net earnings, none. Net earnings column shows excess of expenses.)

For the year 1886 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$401,881 06	$378,880 65	$23,000 41	$206,000 00	$182,999 59	$200,999 59

215 For the year 1887 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$456,551 54	$481,003 57	$24,452 03	$220,848 01	$245,300 04	$227,300 04

(Net earnings, none. Net earnings column shows excess of expenses.)

For the year 1888 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$451,250 97	$420,481 08	$30,769 89	$204,560 00	$173,790 11	$232,345 56

For the year 1889 said amounts were as follows:

Gross earnings.	Operating expenses.	Net earnings.	Fixed charges.	Deficit.	Amount advanced by Pen. Co.
$459,623 00	$411,939 42	$47,683 58	$203,120 00	$155,436 42	$155,436 42

216 To which proposed testimony the defendants, by their counsel, at the time objected upon the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection of the defendants and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

217 M. W. MANSFIELD, a witness for the plaintiff, being duly sworn, testified as follows:

I am superintendent of the Indianapolis and Vincennes railroad, and have held that position since October 15, 1885. I am by profession a civil engineer; was educated at Rensselaer Polytechnic Institute, Troy, New York, and am a member of the American Society of Civil Engineers. I have been engaged in the engineering department of railway service since September 1, 1871, and during that time surveyed, constructed, and was connected with the maintenance and operation of lines of railway in Ohio and Indiana. Since I became superintendent of the Indianapolis and Vincennes railroad I

have constructed twelve miles of branches to that road in Greene, Sullivan, Owen, and Monroe counties, Indiana. I am familiar with every mile of the Indianapolis and Vincennes railroad, the right of way, railroad track, buildings on the right of way, and equipment, and know what it would cost to construct and equip that railroad as it was constructed and equipped on the first day of April, 1891.

And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State what it would have cost per mile in 1891 to have acquired the right of way of and construct and equip with rolling stock the Indianapolis and Vincennes railroad in the condition and manner in which it was constructed and equipped on the first day of April of that year?"

218 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

219 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

And thereupon counsel for plaintiff stated that they proposed to prove by the witness, in answer to the question, that the Indianapolis and Vincennes railroad could, in the year 1891, have been constructed and equipped with rolling stock, including the acquirement of the right of way, in the condition in which it was constructed and equipped on the first day of April of that year, for thirteen thousand dollars ($13,000.00) per mile.

To which proposed testimony the defendants, by their counsel, at the time objected upon the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection of the defendants and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

220 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. State when the Island coal branch and the Gosport branch of the Indianapolis and Vincennes railroad respectively were constructed, the cost of construction of each of said branches, the length of each of them, and what, in your opinion, each of said branches could have been constructed and equipped for in 1891 in the condition they were in on the first day of April in that year."

221 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

222 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

And thereupon counsel for plaintiff stated that they proposed to

prove by the witness that the Island coal branch of the Indianapolis and Vincennes railroad was constructed about the year 1884; that it is 11.88 miles in length and cost about $55,081.00; that the Gosport branch was constructed in 1889; that it is 4.31 miles in length and cost $39,483.14; that neither of said branches have ever had any equipment apart from the equipment of the main line of the road; that said branch roads could have been constructed, including the right of way, in 1891, and put in the condition in which they were on the first day of April, 1891, for the cost of their original construction, as stated.

To which proposed testimony the defendants, by their counsel, at the time objected upon the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection of the defendants and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

223 Hon. CLAUDE MATTHEWS, being duly sworn, on his oath testified as follows:

I was secretary of state of the State of Indiana and *ex officio* member of the State board of tax commissioners for the year 1891, and was present at the sessions of said board when the subject of the valuation and assessment of the property of the plaintiff corporation was under consideration and when the valuation of said property was fixed by said board.

And thereupon counsel for plaintiff propounded to the witness the following question:

Q. "State whether or not, during or before the consideration of the assessment and valuation of the railroad of plaintiff corporation by the State board of tax commissioners for the year 1891, any personal examination or inspection was made of said property by said board as a board or by the individual members thereof in their official capacity for the purpose of ascertaining the value thereof."

To which question the witness made the following answer:

A. "The State board of tax commissioners did not nor did any member thereof in his official capacity before or during the consideration of the valuation and assessment of the railroad of plaintiff corporation by the State board in 1891 make any personal inspection or examination of said property for the purpose of ascertaining the value thereof. Different members of the board being personally acquainted with the railroad track and rolling stock of plaintiff and its value, we did not deem it essential to make an official examination or inspection thereof."

224 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether or not the State board of tax commissioners, at its session for the year 1891, summoned before said board or examined under oath any person or persons acquainted with the true cash value of the plaintiff's property denominated 'railroad track'

and 'rolling stock' and competent to testify as to the true cash value of said property."

To which question the witness made the following answer, to wit:

A. "The State board of tax commissioners, at its session for the year 1891, did not summon before said board or examine under oath any person or persons acquainted with the true cash value of the plaintiff's property denominated 'railroad track' and 'rolling stock' and competent to testify as to the true cash value of said property, but the officers and agents of the plaintiff appeared before the board and made such statements in relation to the value of the property then being assessed as they desired or saw fit to make and the different members of the board had personal knowledge in relation to such matters."

225 And thereupon plaintiff, by its counsel, propounded to the witness the following question:

Q. "Referring to the printed report of the State board of tax commissioners, from which it appears on page 80 that on September 8th, 1891, the State board made its assessment for the year 1891 of the property of all the railroads in the State, having previously had such assessment under consideration, state whether between September 8, 1891, and September 11, 1891, when the State board finally adjourned, the board gave to the plaintiff or to its lessee, the Pennsylvania Company, or to any agent, officer, or representative of either of said corporations, any notice whatever of said assessment and valuation of plaintiff's railroad which said board determined upon and made on September 8, 1891."

To which question the witness made the following answer, to wit:

"No notice whatever of the assessment and valuation of plaintiff's railroad which the State board had determined upon and made on September 8, 1891, was given by said State board to the plaintiff or to its lessee, the Pennsylvania Company, or to any officer, agent, or representative of either of said corporations between September 8, 1891, and September 11, 1891, the date of the final adjournment of the board."

226 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether the State board of tax commissioners at any time before September 8, 1891, when the assessment of the railroad of the plaintiff was finally determined upon and made, gave any notice, knowledge, or intimation to the plaintiff or to its lessee, the Pennsylvania Company, or any officer, agent, or representative of either of said corporations of the assessment and valuation of the plaintiff's railroad which said board proposed and intended to make."

To which question the witness made the following answer, to wit:

A. "The State board of tax commissioners did not, at any time before September 8, 1891, when the assessment of the railroad of plaintiff was finally determined upon and made, give any notice, knowledge, or intimation to the plaintiff or to its lessee, the Penn-

sylvania Company, or to any officer, agent, or representative of either of said corporations of the assessment and valuation of plaintiff's railroad which said board proposed and intended to make."

227 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether on September 8, 1891, when the assessment of plaintiff's railroad was determined upon and made by the State board of tax commissioners, the said assessment was placed upon record or was open to the inspection of the plaintiff's officers, agents, or representatives or to the inspection of the officers, agents, or representatives of the plaintiff's lessee, the Pennsylvania Company; and if not so placed upon record or open to inspection on September 8, 1891, state whether said assessment was placed upon record or was open to the inspection of the officers or agents of the plaintiff or to the officers or agents of the plaintiff's lessee, the Pennsylvania Company, at any time prior to the adjournment of the State board on September 11, 1891."

To which question the witness made the following answer, to wit:

A. "After the assessment of the railroad track and rolling stock of plaintiff had been agreed upon on the 8th day of September, 1891, and while it was being transcribed by the clerk of the board, with the assessments of all other railroad companies, the assessment so made was subject to inspection by the officers of plaintiff or its lessee, in case they desired to make such inspection, but such assessment was not generally open to the inspection of the public until the assessment had been transcribed on the record and finally signed on the 11th of September, 1891."

228 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether or not the State board of tax commissioners, in making and fixing the valuation and assessment of the railroad of plaintiff corporation for the year 1891, valued said railroad higher by reason of the fact that the railroad of the plaintiff was under lease to the Pennsylvania Company and was operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, than said board valued said railroad apart from its said relationship to said corporation."

To which question the witness made the following answer, to wit:

A. "We assessed the railroad track and rolling stock of plaintiff in the condition in which it actually was and took into consideration the circumstances stated in the question; had the plaintiff's road been entirely disconnected from the Pennsylvania Company and the P., C., C. & St. L. R'y Company the assessment would not have been placed as high as it was."

229 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State what amount in dollars per mile was added to the valuation of plaintiff's railroad by the State board of tax commissioners by reason of said relationship between the plaintiff and the

said corporations, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company."

To which question the witness made the following answer, to wit:

A. "Nothing; the value of the railroad track and rolling stock of plaintiff, independent of the connection named in the question, was not assessed nor considered."

230 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State how and why said relationship between the plaintiff and the said corporations, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, was considered by the State board as giving to the plaintiff's railroad such additional value."

To which question the witness made the following answer, to wit:

A. "As stated in the answer to the preceding question, no additional value was assessed on that account. The assessment was made upon the railroad track and rolling stock of plaintiff as it was and not as it was not."

231 And thereupon it was agreed in open court between the parties hereto that it is a fact that prior to the commencement of this action the plaintiff paid or tendered to the proper officers of the counties and cities through or into which the lines of the plaintiff extended on April first, 1891, all taxes assessed against plaintiff for the year 1891, in said counties, cities, and townships, other than those assessed against the property of plaintiff denominated by the statutes "railroad track" and "rolling stock."

And thereupon it was further agreed in open court between the parties hereto that it is a fact that the amounts stated in the complaint herein to have been paid or tendered by the plaintiff to the said several county and city treasurers and tax collectors made defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it for taxes for the entire year 1891 upon the "railroad track" and "rolling stock" of plaintiff in the several counties, cities, and townships through or into which the lines of plaintiff extended were paid and tendered as alleged in the complaint herein.

232 L. L. GILBERT, being duly sworn, on his oath testified as follows:

"I am and for two years or more last past have been assistant to the general counsel of the Pennsylvania Company, the lessee of the plaintiff corporation, and as such assistant it has been my duty to have, and I have had, charge of the payment of taxes against the plaintiff's property in Indiana.

And thereupon plaintiff, by its counsel, propounded to the witness the following question:

Q. "State upon what valuation of plaintiff's 'railroad track' and 'rolling stock' the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned."

233 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

234 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

And thereupon counsel for the plaintiff stated that they proposed to prove by the witness, in answer to the question, that the valuations of the plaintiff's "railroad track" and "rolling stock," upon which the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned, were the valuations of the "railroad track" and "rolling stock" belonging to the plaintiff corporation on April first, 1890, as made and fixed by the State board of equalization for 1890 and distributed by the proper officers to the respective counties and cities through or into which the lines of said corporation extended and of which the defendants are respectively treasurers and tax collectors and as extended on the proper tax duplicates for 1890.

235 To the admission of which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

236 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State upon what rates of tax levies the amounts paid and tendered to the defendants by the plaintiff corporation as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes upon its 'railroad track' and 'rolling stock' for the year 1891 were reckoned."

237 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

238 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

239 And thereupon counsel for plaintiff stated that they proposed to prove by the witness, in answer to the question, that the rates of tax levies upon which the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned were the rates of tax levies as made and fixed by the proper authorities of the respective counties, townships, and cities of which the defendants are respectively treasurers or tax collectors for the year 1891.

240 To the admission of which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

241 And thereupon it was agreed between the parties hereto in open court that it is a fact that the amounts so tendered as aforesaid were tendered in lawful money of the United States, made legal tender by the laws of the United States, and that the amounts so tendered to and refused by said defendants named in the complaint as having refused the amounts therein specified were by the plaintiff, at the time of bringing this action, brought into court and deposited in the registry of the court, and that the tenders so made by the plaintiff were kept good by the payment into court of said sums so tendered as aforesaid.

And thereupon it was agreed between the parties hereto in open court that it is a fact that prior to the commencement of this action the taxes based upon the valuation of the State board of tax commissioners against the plaintiff for the year 1891 upon its "railroad track" and "rolling stock" were upon the respective tax duplicates in the hands of the respective county, city, and township treasurers and tax collectors made defendants herein, and that all and each of said officers and their collectors and deputies were prior to the commencement of this suit and still are threatening to collect the taxes assessed against plaintiff upon its "railroad track" and "rolling stock" for the year 1891 as distributed by the proper officers to the counties, cities, and townships of which the defendants are respectively county, city, and township treasurers and tax collectors, except the amounts paid as aforesaid by the plaintiff by proceedings under the statutes of the State relating to the collection of taxes.

242 And thereupon the defendants, to sustain the issue on their part, introduced the Honorable CLAUDE MATTHEWS as a witness and asked said witness the following question:

"Q. In assessing plaintiff's property, what, if any, assessment did you make except upon the railroad track and rolling stock of plaintiff situate within the State of Indiana?"

To which question the plaintiff, by its counsel, objected upon the following grounds, to wit:

1. That said question is incompetent and illegal because it is an attempt to get from the witness a legal construction of the words used by the State board of tax commissioners in their certificate appended to their official annual report for the year 1891.

2. Because said question asks from the witness a legal construction of the certificate of the said State board of tax commissioners to their official report for the year 1891.

3. Because said question, if answered that they made none, would, in effect, make the witness contradict the words used by said State

board of tax commissioners in their said certificate to their official report for the year 1891.

Which objection was overruled by the court; to which ruling of the court the plaintiff then and there at the proper time excepted, and thereupon the witness answered the question as follows:

243 "A. We made none whatever"

And thereupon the defendants, by their counsel, propounded to the witness the following question:

"Q. In assessing the property of plaintiff within the State of Indiana did you assess any property of value outside of the State?"

To which question the plaintiff, by its counsel, at the time objected upon the following grounds:

1. That said question is incompetent and illegal, because it is an attempt to get from the witness a legal construction of the words used by the State board of tax commissioners in their certificate appended to their official annual report for the year 1891.

2. Because said question asks from the witness a legal construction of the certificate of the said State board of tax commissioners to their official report for the year 1891.

3. Because said question, if answered that they did not, would in effect make the witness contradict the words used by the State board of tax commissioners in their said certificate to their official report for the year 1891.

Which objection was overruled by the court; to which ruling of the court the plaintiff then and there at the proper time excepted, and thereupon the witness answered the question as follows:

"A. We did not."

244 And this was all the evidence given in the cause.

And the plaintiff now tenders this its bill of exceptions on this 8th day of December, 1892, being within the time limited for the filing of the same, and prays that the same may be signed, sealed, and made a part of this record, which is done this 8th day of December, 1892.

EDGAR A. BROWN, *Judge.*

245 And afterwards, to wit, on the 10th day of December, 1892, being the 30th judicial day of the November term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

Within the time limited by the court comes the plaintiff, by its attorneys, and files and submits to the court for approval its appeal bond in this cause, and the court now approves said appeal bond and the sureties thereon, said appeal bond being in the words and figures following, to wit:

"Know all men by these presents that we, 'The Indianapolis and Vincennes Railroad Company,' Samuel O. Pickens, and Otto N. Frenzel, are held and firmly bound unto Victor M. Backus *et al.* in the penal sum of one thousand dollars; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs,

executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10 day of December, 1892.

The condition of the above obligation is such that whereas heretofore, to wit, of the 5th day of December, 1892, the said Victor M. Backus, in the Marion circuit court, recovered a judgement against the said 'The Indianapolis and Vincennes Railroad Company' for the sum of —— dollars, cost of suit, etc.; from which said judgment of said Marion circuit court the said 'The Indianapolis and Vincennes Railroad Company' appeals to the supreme court of Indiana:

Now, — the said Indianapolis and Vincennes Railroad Co. shall and will duly prosecute said appeal and abide by and pay the judgment and costs which may be rendered or affirmed against it, then the obligation to be null and void; otherwise to be — remain in full force and virtue in law.

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY. [SEAL.]
SAMUEL O. PICKENS, [SEAL.]
OTTO N. FRENZEL. [SEAL.]

Approved Dec'r 10, 1892.

EDGAR A. BROWN, *Judge.*"

246 STATE OF INDIANA, *County of Marion*, } ss:

I, John R. Wilson, clerk of the circuit court within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the entries of proceedings had and also of all the papers filed in the said circuit court in this cause, numbered 6220, as appears from the records and files of said court now in my custody and keeping.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 12th day of December, 1892.

[SEAL.] JOHN R. WILSON, *Clerk.*

247 In the Supreme Court.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS, JOSEPH M. LITTLE, WILLIAM F. CASSADY, Sanders Hubbard, Tolbert H. Sudbury, John French, Jonathan Scott, George W. Donaldson, and F. H. Hoffman.

Assignment of Errors.

1. The court below erred in overruling appellant's motion for a new trial.

2. The court below erred in rendering judgment and decree against appellant and in favor of appellees.

BUTLER, SNOW & BUTLER,
S. O. PICKENS,
Attorneys for Appellant.

248 And afterwards, to wit, on the 28th day of December, 1892, said day being the 27th judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the parties, by their attorneys, and appellant moves the court for a temporary injunction herein, and presents and files its undertaking in due form, duly executed by the appellant as principal and J. T. Brooks, J. L. Bradley, and J. P. Frenzel as sureties thereon, which undertaking is approved by the court, said undertaking being in the words and figures following, to wit:

249 THE STATE OF INDIANA:

In the Supreme Court.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY, Appellant,
vs.
VICTOR M. BACKUS *et al.*, Appellees. } No. 16800.

We undertake that the plaintiff in the above-entitled cause shall pay to the defendants all damages and costs which may accrue to them by reason of the injunction in this action.

Witness our hands this 19th day of December, A. D. 1892.

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY,
By JAMES McCREA, *Vice-President.*
J. T. BROOKS.
J. L. BRADLEY.
J. P. FRENZEL.

Attest:
[SEAL.] S. B. LIGGETT, *Sec'y.*

Approved by me this — day of December, A. D. 1892.

250 STATE OF PENNSYLVANIA, *County of Allegheny,* } *ss:*

Before me, the undersigned authority in and for said county and State, personally appeared James McCrea, vice-president of the Indianapolis and Vincennes Railroad Company, who acknowledged that he had executed the accompanying undertaking in the suit of The Indianapolis and Vincennes Railroad Company, appellant, *vs.* Victor M. Backus *et al.*, appellees, No. 16800, pending in the supreme court of Indiana, for and in behalf of said company, and that the same is the voluntary act and deed of said James McCrea, vice-president, for and in behalf of said The Indianapolis and Vincennes Railroad Company.

Witness my hand and notarial seal this 24th day of December, A. D. 1892.

M. H. SHANE,
Notary Public.

[SEAL.]
17—1300

251 And the court, being fully advised in the premises, finds that a temporary injunction should be granted until the further order of this court.

It is further considered, ordered, and adjudged by the court that the appellees and each of them be, and they are hereby, restrained and enjoined from any and all attempts and efforts to levy and collect of and from the appellant or its property the taxes or any part thereof described in the complaint in said cause until further order of this court, subject to the right of the appellees upon two days' notice to the appellants to move the court for a dissolution of said injunction.

And it is further, upon the agreement of the parties, ordered that this cause be, and it is hereby, advanced and set down for hearing on the twelfth day of January, 1893, subject to change upon further order of the court as to the time of such hearing, and if the said hearing cannot be had on the said twelfth day of January it shall be had as soon thereafter as practicable.

252 And afterwards, to wit, on the 30th day of December, A. D. 1892, said day being the 29 day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files points and authorities for oral argument in words and figures following:

(Here insert.)

And afterwards, to wit, on the 3rd day of January, A. D. 1893, said day being the 32 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files points and authorities for oral argument and briefs in behalf of appellant in the words and figures following:

(Here insert.)

And afterwards, to wit, on the 13th day of January, A. D. 1893, said day being the 41 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the appellees, by their counsel, Claypool & Claypool, and by Alonzo G. Smith, attorney general; John W. Kern, Albert J. Beverage, and William A. Ketcham, for the State of Indiana, and enter their appearance in behalf of the appellees in said cause, and file points and authorities for oral arguments and briefs in behalf of appellees in the words and figures following:

(Here insert.)

And afterwards, to wit, on the 14th day of January, A. D. 1893, the same being the 42 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the parties, by their counsel, and this cause is submitted

to the court for judgment and decree, as provided by the act of the General Assembly of the State of Indiana, approved April 13th, 1885, and the rules of said supreme court adopted September 23rd, 1885, in relation thereto.

253 And afterwards, to wit, on the 18th day of January, A. D. 1893, said day being the 45 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the appellees, by their counsel, and file points and authorities for oral argument.

And afterwards, to wit, on the 21st day of January, A. D. 1893, the said day being the 48 judicial day of the November, 1892, term of said court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files its reply briefs in behalf of appellant in the words and figures following (here insert).

254 And be it also remembered that on the 18th day of February, 1893, the same being the 72nd judicial day of the November term of said supreme court—present, Hon. Silas D. Coffey, chief justice; Hon. Walter Olds, Hon. James McCabe, Hon. Timothy E. Howard, Hon. Leonard J. Hackney, judges—the following proceedings were had in said cause:

Come the parties, by their attorneys, and the court, being fully advised in the premises, affirms the judgment of the court below with the following opinion pronounced by OLDS, *J.*:

255 This is a suit brought by the appellant against the appellees to enjoin the collection of taxes assessed against the appellant railway company by the State board of tax commissioners of Indiana. The appellant is a corporation organized under the laws of Indiana and is the owner of a railroad in the State of Indiana which is under lease to and operated by the Pennsylvania Company, a corporation engaged in interstate commerce and organized under the laws of Pennsylvania, and its railroad track and rolling stock was assessed for taxation by the State board of tax commissioners under the act of the legislature of Indiana approved March 6th, 1891.

The principal question involved in this case relates to the constitutionality and validity of the law under which the appellant's property was assessed, but some other questions are also presented by the record. It is urged that this law is invalid principally for two reasons:

First. That it denies to railway companies due process of law touching the valuation and assessment of their property denominated by the act "railroad track" and "rolling stock," and therefore it is in conflict with sec. 1, art. 14, of the Constitution of the United States and sec. 12, art. 1, of the constitution of Indiana.

Second. That it denies to railway companies equal protection of

the laws as guaranteed by said sec. 1, art. 14, of the Constitution of the United States, in that it grants to owners of other classes of property a hearing before a board authorized to correct errors in valuations and assessments and denies this right to railway corporations, who are persons within the meaning of the Constitution.

The view we take of the statute is that the only real difference
256 in the assessment of railroad track and rolling stock and other property is that the other property is valued and assessed by assessors and county boards of review, with a right of hearing on the part of the owners of such property before the county boards, and power vested in the county boards to correct errors, with a right of appeal to the State board, while the property denominated railroad track and rolling stock is valued and assessed, in the first instances, by the State board of tax commissioners, with the right of hearing before such board granted to the owner of such property, and power vested in that board to correct errors; that by sec. 114 of the act power is given county boards to correct errors on showing made by the property-owners, and by sec. 129 the same power to correct errors given to county boards by sec. 114 is given to the State board in relation to property over which it has jurisdiction.'

The act requires that railway companies shall submit to the State board through the auditor of State verified schedules of their property and its value, and makes it the duty of the State board to value and assess it and fixes the time for the sitting of the State board, and gives to such board the same power vested in the county boards to correct errors in valuations and assessments on proper showing.

The law, we think, is not obnoxious to either sec. 1, art. 14, of the Constitution of the United States or sec. 12, art. 1, of this State, for it does not deny to railroad corporations due process of law or equal protection of the laws.

It is further urged that the law is invalid for the reason that it provides for an unwarranted method of valuation and assessment of railroad track and rolling stock, in that it authorizes the State board to take into consideration the connections which a railroad has with other and interstate roads, and provides for a mileage valuation in proportion to which the mileage in a subdivision
257 of the State bears to the whole number of miles within the State; that such mode of valuation imports values from beyond State lines and taxes values property taxable in other States.

We do not think there is any valid objection to the law on this account. A railroad becomes valuable by reason of its connections and terminals and they are proper to be considered and do not import values.

It is further urged that it, the law, imposes a tax and unauthorized burdens on interstate commerce by reason of the methods prescribed for the valuation of railroad property operated in the business of interstate commerce, but this question is involved in the next preceding question, and holding the method legal is a holding that it is not a tax on interstate commerce, but is a taxation of the

property used in the business of interstate commerce, which is not imposing unauthorized burdens on interstate commerce.

Having held the law valid, it follows that the State board had exclusive jurisdiction in the valuation and assessment of railroad property denominated railroad track and rolling stock, and such valuation and assessment could only be attacked and set aside for fraud on the part of the assessing board, and that is not what is sought to be done in this case. The record required by the act to be kept by the State board is final and conclusive, and no evidence was competent to be introduced in the case, as the court had no authority to inquire into the assessment except it was attacked for fraud.

The record of the board, we think, shows affirmatively that the valuation fixed upon the railroad property denominated railroad track and rolling stock was fixed upon such property as was within the State, and that the law does not necessarily authorize a
258 construction requiring the State board to import values, even if they could do so, and that the record shows that the board so construed the laws as that they did not import values. It is contended that the record affirmatively shows that the board fixed values on a wrong basis. We are referred to a recital in the record upon which this contention is based, but we cannot agree with such contentions.

It is finally contended that the act creating the State board and defining its powers is unconstitutional and void for the reason that judicial powers are conferred on the board, some members of which are executive and administrative State officers, and that it creates two State offices and provides for their being continually filled by appointment, whereas the Constitution requires that judicial officers shall be elected by the people. We do not think this portion of the law invalid.

The same questions presented in this case are presented and fully discussed and decided in the cases of The C., C., C. & St. L. R'y Co. *vs.* Backus and The P., C., C. & St. L. R'y Co. *vs.* Backus, this term, and upon the decisions in these cases and the reasons there given this decision in this case is based. There is no error in the record.

Judgment affirmed.

259 And thereupon, the court being fully advised in the premises, it is therefore considered by the court that the judgment and decree of the Marion circuit court in the above-entitled cause be in all things affirmed at the cost of the appellant.

And it is further considered by the court that the appellees recover of the appellant the sum of — dollars for their costs and charges in this behalf expended.

260 Be it further remembered that on this 20 day of February, 1893, the same being the 73 judicial day of the November term of the supreme court of Indiana for the year 1892, came again the parties, by their attorneys, and the Indianapolis and Vincennes Railroad Company filed in this cause in this court its assignment of

errors herein; which said assignment of errors is in the words and figures following:

INDIANAPOLIS AND VINCENNES RAILROAD COMPANY, Plaintiff in Error, *vs.* VICTOR M. BACKUS, JOSEPH K. LITTLE, William F. Cassady, Sanders Hubbard, Tolbert H. Sudbury, John French, Jonathan Scott, George W. Donaldson, and F. H. Hoffman, Defendants in Error.	In Error to the Supreme Court of the State of Indiana.

Assignment of Errors.

1. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the act of the legislature of the State of Indiana concerning taxation, approved March 6, 1891, "is a valid enactment and not in conflict with any provisions of the Constitution either of this State or of the United States."

261 2. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana, concerning taxation, approved March 6, 1891, relating to and providing for the assessment and valuation, for taxation, of the "railroad track" and "rolling stock" of The Indianapolis and Vincennes Railroad Company, plaintiff in error herein, and of other like corporations, do provide for and secure to the said Indianapolis and Vincennes Railroad Company and other like corporations the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of their "railroad track" and "rolling stock," properly and lawfully subject to taxation in Indiana.

3. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana, concerning taxation, approved March 6, 1891, relating to and providing for the assessment and valuation, for taxation, of the "railroad track" and "rolling stock" of The Indianapolis and Vincennes Railroad Company, plaintiff in error herein, and other like corporations, do not deny to the said Indianapolis and Vincennes Railroad Company and other like corporations "the equal protection of the laws" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of their "railroad track" and "rolling stock," sub-

262 ject to taxation in Indiana.

4. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the act of the legislature of Indiana, concerning taxation, approved March 6, 1891, did give to plaintiff in error the right and oppor-

tunity to be heard for the correction of errors, mistakes, and overvaluations in the assessment of plaintiff's "railroad track" and "rolling stock," after the State board of tax commissioners agreed upon its assessments and valuations thereof, and before the same were made final, for the following reasons: First. Because the said act limits the sessions of said board to forty days, and does not require said board to make or announce any assessments and valuations of "railroad track" and "rolling stock" prior to the last day of its session, thereby enabling said board to prevent the possibility of any hearing for the correction of errors, mistakes, and overvaluations made by said board in the assessment and valuation of "railroad track" and "rolling stock." Second. Because the record in this cause conclusively proves that the State board of tax commissioners for the year 1891 did not conclude or agree upon any assessment and valuation of the "railroad track" and "rolling stock" of plaintiff in error herein, or of any railway corporation subject to taxation in Indiana, until September 8, 1891; that on September 8, 1891, said board agreed upon its assessments and valuations of the "railroad track" and "rolling stock" of all the railway corporations subject to taxation in Indiana, and delivered its memoranda
263 of all of said assessments and valuations to its clerk for recording the same; that said board did not give to plaintiff in error herein, or any other railway corporation subject to taxation in Indiana, any notice or information whatever that said board had agreed upon its assessments and valuations of "railroad track" and "rolling stock;" that the recording of said assessments and valuations was done during the last three days of said session of said board, and that the assessments and valuations of the "railroad track" and "rolling stock" subject to taxation in Indiana were finally made by said board on September 11, 1891, which was the fortieth and last day of its session as limited by said act.

Wherefore, plaintiff in error avers that under said act said board could and did prevent the possibility of any hearing for the correction of errors, mistakes, and overvaluations of the "railroad track" and "rolling stock" of plaintiff in error herein.

5. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the State board of tax commissioners did not exceed its jurisdiction in making its assessment and valuation of plaintiff's "railroad track" and "rolling stock," in that said board, in making said assessment and valuation, considered, estimated, and took into account as important increments or elements of value of plaintiff's "railroad track" and "rolling stock" the facts that plaintiff's railroad was under lease to the Pennsylvania Company, a corporation of another State, and was operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Com-
264 pany, a corporation holding franchises granted by Illinois, Indiana, Ohio, West Virginia, and Pennsylvania, and owning and operating lines of railway extending through or into said several States, thereby in substance and effect holding and adjudging that the "railroad track" and "rolling stock" of plaintiff can

lawfully and constitutionally be charged with and taxed for part of the value of the franchises, terminals, transportation facilities, properties, and property rights of the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company as corporations of States other than Indiana and engaged in interstate traffic and transportation.

And said supreme court of Indiana further erred in holding and adjudging a law valid and not in conflict with the Constitution of the United States under which such importations and assignments of fictitious and arbitrary increments or elements of value to the "railroad track" and "rolling stock" of plaintiff not inherent in or appertaining to said "railroad track" and "rolling stock" as such and as the taxable property of this plaintiff in error are authorized, permitted, required, or made possible.

Wherefore, The Indianapolis and Vincennes Railroad Company, plaintiff in error herein, prays that the holdings, decision, and judgment of the supreme court of Indiana may be reversed.

JOHN M. BUTLER,
ALPHEUS H. SNOW,
JOHN MAURICE BUTLER,
Attorneys for Plaintiffs in Error.

S. O. PICKENS, *Of Counsel.*

265 And afterwards, to wit, on the 20 day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said court, came again the said Indianapolis and Vincennes Railroad Company, by its said attorneys, and filed in the office of the clerk of said supreme court its petition for allowance of writ of error, issuance of citation, and continuance of injunction pending the decision of the United States Supreme Court on writ of error, said petition being in the words and figures following, to wit:

266 In the Supreme Court of Indiana.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, and Others.

Petition for allowance of writ of error, issuance of citation, and continuance of injunction pending decision of United States Supreme Court on writ of error.

The Indianapolis and Vincennes Railroad Company comes now, by its attorneys, and shows the court that upon the pleadings and face of the record of this cause the following Federal questions are presented and involved, to wit:

1. Whether or not the act of the legislature of Indiana concerning taxation, approved March 6, 1891, provides to the plaintiff, The Indianapolis and Vincennes Railroad Company, and other like

corporations the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States.

2. Whether or not the said act denies to the plaintiff, The Indianapolis and Vincennes Railroad Company, and other like corporations "the equal protection of the laws" required and enjoined by section 1 of the fourteenth amendment to the Constitution of the United States.

267 3. Whether or not the said act, in so far as its provisions and requirements relating to the assessment and valuation of "railroad track" and "rolling stock" are concerned, complies with the requirements of section 1 of the fourteenth amendment to the United States Constitution, because said act permits, authorizes, and renders it possible for the State board of tax commissioners to prevent and render impossible any hearing for the correction of errors, mistakes, and overvaluations in its assessments and valuations of "railroad track" and "rolling stock" by making its assessments and valuations at so late a time in its limited session as to render any hearing for the correction of errors, mistakes, and overvaluations utterly impossible.

4. Whether or not said act complies with the requirements of the Constitution of the United States, because it permits, authorizes, and renders it possible for the State board of tax commissioners to consider, estimate, assess, and value for taxation in Indiana, and as constituting increments and elements of taxable value of "railroad track" and "rolling stock" situated in and subject to taxation in Indiana, the value of franchises and franchise and contract rights granted by States other than Indiana and the value of "railroad track" terminals, terminal rights and facilities, and "rolling stock" situated in, wholly used in, and duly taxed in States other than Indiana.

5. Whether or not the said act is in conflict with section 8, article 1, of the Constitution of the United States, in this, namely:

268 That said act permits, authorizes, and, in effect, requires the State board of tax commissioners to indirectly impose taxes upon the instruments, implements, and earnings of interstate commerce.

The said Indianapolis and Vincennes Railroad Company further shows the court that by the opinion and judgment rendered by this court in this cause the said act of the legislature of Indiana concerning taxation, approved March 6, 1891, is held and adjudged to be valid and not in conflict with the Constitution of the United States as to any or either of the points or questions hereinabove stated.

And said plaintiff herein, being desirous to present said Federal questions to the Supreme Court of the United States for consideration and final decision, does now pray this court that a writ of error, duly signed by the clerk of this court and sealed with the seal of this court, may be allowed to said plaintiff, and that a citation duly signed by the chief justice of this court may be issued.

And inasmuch as great and irremediable wrong and injury would be done to this plaintiff, and the decision and judgment of the Su-

preme Court of the United States, in case it should reverse the judgment of this court and hold said act invalid and in conflict with the Constitution of the United States, would in great degree be rendered nugatory and useless for the protection of the rights and property of this plaintiff unless the defendants, appellees in this court,
269 are restrained and enjoined from collecting or attempting to collect the alleged taxes in contention in this cause pending the decision in the Supreme Court of the United States upon the writ of error sued out by this plaintiff—

Therefore the plaintiff, The Indianapolis and Vincennes Railroad Company, prays that the injunction and restraining order heretofore granted to it by this court may be continued in full force pending the decision of the Supreme Court of the United States upon the writ of error sued out by said plaintiff.

Plaintiff avers that at the date of filing this petition the preparation of the transcript of the record herein for the Supreme Court of the United States is so far advanced that said transcript can be completed within a few hours, and that it will diligently and with all practicable dispatch prosecute its said writ of error to final decision and judgment; and to that end it here now offers to join and unite with the defendants in error in a motion and application to the Supreme Court of the United States to advance said cause presented by said writ of error upon its docket and assign the case for hearing at the earliest possible day; and in order to make said motion to advance possible at an early day plaintiff avers that it will at once, without delay, file its record in the Supreme Court of the United States and will cause it to be printed as soon as possible and will cause copies of said printed record to be furnished to counsel for defendants in error immediately after the same are printed; and plaintiff will ever pray.

BUTLER, SNOW & BUTLER,
SAMUEL O. PICKENS,
Attorneys for the Petitioner, Indianapolis and Vincennes Railroad Company, Plaintiff in Error.

270 And afterwards, to wit, on the 20th day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said supreme court, came again the said Indianapolis and Vincennes Railroad Company, plaintiff in error herein, by its said attorneys, and filed in the office of the clerk of said supreme court its brief in support of said petition in the words and figures following, to wit:

(Here insert.)

And afterwards, to wit, on the 20th day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said supreme court, came again the said defendants in error herein, by their said attorneys, and filed in the office of the clerk of said supreme court their brief in opposition to said petition, said brief being in the words and figures following:

(Here insert.)

271 And afterwards, to wit, on the 21st day of February, 1893, the same being the 74 judicial day of the November, 1892, term of said supreme court, came again The Indianapolis and Vincennes Railroad Company, plaintiff in error herein, by its said attorneys, and filed in the office of the clerk of said supreme court its injunction undertaking in the words and figures following, to wit:

272 THE STATE OF INDIANA:

In the Supreme Court.

THE INDIANAPOLIS & VINCENNES RAILROAD COMPANY, Appellant, *v.* VICTOR M. BACKUS, Treasurer of Marion County, *et al.*, Appellees. } No. 16800.

We undertake that the appellant in the above-entitled cause shall pay to the appellees all damages and costs which may accrue to them by reason of the injunction in this action.

Witness our hands this 13th day of February, A. D. 1893.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY,
By JAMES McCREA, *Vice-President.*

Attest: S. H. LIGGETT,
[SEAL.] *Secretary.*

J. T. BROOKS.
J. L. BRADLEY.
J. P. FRENZEL.

Taken and approved this — day of February, 1893.

273 STATE OF PENNSYLVANIA, *County of Allegheny,* } *ss.*:

Before me, the undersigned authority, a notary public in and for said county and State, personally appeared James McCrea, vice-president of the Indianapolis & Vincennes Railroad Company, who acknowledged that he had executed the accompanying undertaking in the suit of The Indianapolis & Vincennes Railroad Company, appellant, against Victor M. Backus, treasurer of Marion county, Indiana, *et al.*, appellees, No. 16800, in the supreme court of Indiana, for and on behalf of said company, and that the same is the voluntary act and deed of said James McCrea, vice-president, for and on behalf of said The Indianapolis & Vincennes Railroad Company.

Witness my hand and notarial seal this 13th day of February, A. D. 1893.

H. G. OLIPHANT,
[SEAL.] *Notary Public.*

274 And afterwards, to wit, on the 21st day of February, 1893, the same being the 74 judicial day of the November, 1892, term of said supreme court, came again the parties hereto, by their respective attorneys, and thereupon the court having examined the briefs and argument of counsel and being fully advised in the premises, and it appearing to the court that the plaintiff in error has, with all reasonable dispatch, prosecuted its proceedings in error herein and is willing to unite with the defendants in error herein in a motion to the Supreme Court of the United States to advance this cause upon the docket and calendar of said court, it is now considered and ordered by the court that the decree rendered herein by this court, affirming the judgment of the Marion circuit court and refusing a perpetual injunction herein, be, and the same is, suspended and modified in the manner following, to wit:

The injunction granted herein on the 28th day of December, 1892, against the defendants in this cause, appellees in this court, defendants in error in the Supreme Court of the United States, and each and every of them, be, and the same is hereby, continued in force upon the undertaking filed herein, executed by the appellant, as principal, and J. T. Brooks, J. L. Bradley, and J. P. Frenzel, as sureties, February 13, 1893, which said undertaking is now approved by the court to the extent and upon the conditions following, to wit:

The appellees herein, defendants in error in the Supreme Court of the United States, and each and every of them are hereby restrained and enjoined from collecting or attempting to collect from the plaintiff in error or out of any property of plaintiff in error the amounts claimed as taxes for the year 1891, mentioned in the
275 complaint herein and claimed to be payable to and collectible by the respective counties, cities, towns, and townships of which the defendants, appellees and defendants in error, are respectively treasurers and tax collectors during the period of thirty days from the date of the judgment of affirmance herein, and in case the said Indianapolis and Vincennes Railroad Company shall have filed in the office of the clerk of the Supreme Court of the United States within said thirty days its transcript of the record on said writ of error, then said injunction to remain in force until the final decision and decree of the Supreme Court of the United States upon the writ of error herein.

SILAS D. COFFEY, *C. J.*

276 And afterwards, to wit, on the 21 day of February, 1893, the same being the 74 judicial day of the November term, 1892, of said supreme court, came again the parties, by their respective attorneys, and, the court being sufficiently advised in the premises, it is now considered and ordered that the clerk of this court sign the writ of error from the Supreme Court of the United States herein, and that a citation be issued on said writ of error to the defendants in error herein, and thereupon Andrew M. Sweeney, Esq., the clerk of said supreme court, signed the writ of error from the Supreme Court of the United States, and Hon. Silas D. Coffey, the chief justice of this court, signed the citation to the defendants in

error issued on said writ of error, and thereupon the said chief justice took and approved the cost bond of the plaintiff in error on said writ of error, which said writ of error, cost bond, and citation were thereupon filed by the plaintiff in error, by its attorneys, in the office of the clerk of said supreme court, said writ of error, cost bond, and citation being in the words and figures following, to wit:

277 UNITED STATES OF AMERICA:

The President of the United States of America to the supreme court of the State of Indiana, Greeting:

Because in the record and proceedings, as also on the rendition of a judgment in a plea and an appeal which is in the said supreme court of Indiana, before you, between the Indianapolis and Vincennes Railroad Company and Victor M. Backus, as treasurer of Marion county, Indiana; Joseph K. Little, as treasurer of Hendricks county, Indiana; William F. Cassady, as treasurer of Owen county, Indiana; Sanders Hubbard, as treasurer of Morgan county, Indiana; Tolbert H. Sudbury, as treasurer of Monroe county, Indiana; John French, as treasurer of Greene county, Indiana; Jonathan Scott, as treasurer of Sullivan county, Indiana; George W. Donaldson, as treasurer of Knox county, Indiana, and F. H. Hoffman, whose full Christian name is unknown, as treasurer of the city of Vincennes, Knox county, Indiana, the validity of the act of the legislature of the State of Indiana, approved March 6, 1891, concerning taxation is drawn in question and the decision of the said supreme court of Indiana is in favor of the validity of said statute, and because a manifest error hath happened, to the great damage of the said Indianapolis and Vincennes Railroad Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you
278 send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 24th day of February, A. D. 1893.

NOBLE C. BUTLER, *Clerk.*

279 In the Supreme Court of the United States.

THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY, Plaintiff in Error,
vs.
VICTOR M. BACKUS and Others, Defendants in Error.

We undertake to pay all costs taxable and chargeable to the plaintiff in error herein.

INDIANAPOLIS AND VINCENNES
RAILROAD COMPANY,
By SAMUEL O. PICKENS, *Att'y.*
J. P. FRENZEL.

280 UNITED STATES OF AMERICA:

To Victor M. Backus, as treasurer of Marion county, Indiana; Joseph K. Little, as treasurer of Hendricks county, Indiana; William F. Cassady, as treasurer of Owen county, Indiana; Sanders Hubbard, as treasurer of Morgan county, Indiana; Tolbert H. Sudbury, as treasurer of Monroe county, Indiana; John French, as treasurer of Greene county, Indiana; Jonathan Scott, as treasurer of Sullivan county, Indiana; George W. Donaldson, as treasurer of Knox county, Indiana; and F. H. Hoffman, whose full Christian name is unknown, as treasurer of the city of Vincennes, Knox county, Indiana, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Indiana, wherein The Indianapolis and Vincennes Railroad Company is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the opinion and judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Silas D. Coffey, chief justice of the supreme court of Indiana, this twenty-fourth day of February, in the year of our Lord one thousand eight hundred and ninety-three.

SILAS D. COFFEY,
Chief Justice S. C. I.

281 We hereby acknowledge service of the within citation this 24th day of February, A. D. 1893.

SOLOMON CLAYPOOL,
ALONZO GREEN SMITH,
Att'y Gen'l of Indiana.
JNO. W. KERN,
ALBERT J. BEVERIDGE AND
WILLIAM A. KETCHAM,
Att'ys for Def'ts in Error.

282 STATE OF INDIANA, }
Supreme Court. }

I, Andrew M. Sweeney, clerk of the supreme court of Indiana, certify the above and foregoing to be a true and complete transcript of the record of proceedings had, papers filed (excepting points and authorities for oral argument and briefs), motions decided, rulings made, opinion delivered, judgment rendered, assignment of errors for United States Supreme Court, injunction order, injunction bond, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the United States Supreme Court to the supreme court of Indiana and the original citation to the defendants in error and acknowledgment of service thereof.

Which said transcript, annexed to and hereby returned, together with said original writ of error and original citation, I hereby certify as and for my full return to said writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 24th day of February, A. D. 1893.

[Seal Supreme Court State of Indiana, MDCCCXVI.]

ANDREW M. SWEENEY,
Clerk of Supreme Court of Indiana.

Endorsed on cover: Case No. 15,270. Indiana supreme court. Term No., 1300. The Indianapolis & Vincennes Railroad Company, plaintiff in error, *vs.* Victor M. Backus, as treasurer of Marion county, Indiana, *et al.* Filed February 27th, 1893.

SUPREME COURT
OF THE
UNITED STATES.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, *Plaintiff in Error,* *vs.* VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, AND OTHERS, *Defendants in Error;*	No. 899. OCTOBER TERM, 1893.
AND	
THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY, *Plaintiff in Error,* *vs.* VICTOR M. BACKUS, TREASURER OF MARION COUNTY, INDIANA, AND OTHERS, *Defendants in Error.*	No. 900. OCTOBER TERM, 1893.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

BRIEF IN BEHALF OF PLAINTIFFS IN ERROR.

STATEMENT.

These cases involve the validity of an act of the legislature of Indiana, entitled "An Act concerning taxation, repealing all laws in conflict therewith, and

declaring an emergency." Approved March 6, 1891,— as tested by the provisions of the constitution of the United States.

These railway companies claim that this law, in so far as it purports to provide for and regulate the valuation and assessment, for taxation, of the two classes of property denominated "*railroad track*" and "*rolling stock*,"— is invalid and in violation of express provisions of the constitution of the United States, because:

1. It denies "*due process of law*" to railway corporations, touching the valuation and assessment, for taxation, of their property denominated, by said law, "railroad track" and "rolling stock."

2. It denies to railway corporations, in respect to their "railroad track" and "rolling stock," "*the equal protection of the laws*" granted to all other persons and corporations taxable in Indiana.

3. It permits and, in effect, requires, and in these cases has resulted in the assessment and valuation for taxation in Indiana, of franchises granted by other States, and of leases, operating contracts, and other contract rights procured and held under charters granted by other States, as constituting elements of taxable value of the "railroad track" and "rolling stock" of these plaintiffs in error subject to taxation in Indiana.

Thus resulting in *extraterritorial taxation*, and in the taxation in Indiana of properties and values already duly and fully taxed in and by other States.

4. It permits and, in effect, requires, and, in the case of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company,—which owns and operates an interstate line of railway and is engaged in interstate transportation,—has resulted in causing large amounts

and values of "rolling stock" of said plaintiff in error, which is never used in Indiana, or in connection with the traffic and transportation carried on by said plaintiff in error over and upon its lines of railway in or across the State of Indiana, and which is used and operated wholly and solely in other States, and is fully taxed in such other States, to be assessed and valued for taxation *in Indiana;* and that said law permits, in effect requires and, in the case of said plaintiff in error, has resulted in the attempted taxation *in Indiana* of the instruments, appliances, and facilities owned, used and operated by said plaintiff in error in its local and interstate traffic and transportation in States other than Indiana.

Thus resulting in the taxation *in Indiana* of property *without the territorial jurisdiction of Indiana*, within the territorial jurisdiction of States other than Indiana, and already duly and fully taxed in and by such other States; and thereby imposing, indirectly, double, unjust and burdensome taxation upon the *business* of plaintiff in error as a carrier of interstate commerce, and upon the *earnings* of said plaintiff in error earned in interstate traffic and transportation carried on by it in States other than Indiana.

5. It permits and, by implication, requires the State Board of Tax Commissioners, in assessing and valuing for taxation the "railroad track" of interstate lines of railway, which is situated within Indiana, to assume that an average mile of such interstate railway *outside of Indiana* is of no greater taxable value than an average mile of such interstate railway within Indiana: and in the case of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, one of these plaintiffs in error, said Board of Tax Commissioners did consider,

estimate and take into account the entire value of all of the "railroad track," terminals, and terminal facilities of said plaintiff in error, situated in Illinois, Ohio, West Virginia, and Pennsylvania, as adding large increments and elements of value to the taxable value of each mile of the "railroad track" of said plaintiff in error situated in Indiana over and above what its taxable value would have been held to be if said plaintiff in error had owned no "railroad track" outside of Indiana:—notwithstanding the facts—conclusively proved by evidence in the record—that an average mile of the "railroad track" of said plaintiff in error, outside of Indiana, is of far greater value than an average mile of its "railroad track" within Indiana; and that the terminals, terminal property, and terminal facilities owned by said plaintiff in error outside of Indiana, are vastly more valuable than the terminals, terminal property and terminal facilities owned by said plaintiff in error within the State of Indiana.

The foregoing claims of these plaintiffs in error are covered by their assignments of error in the records.

Record P. C. C. & St. L. Ry. Co. Case, pp. 194 to 197.

Record I. & V. R. R. Co. Case, pp. 134 to 136.

In the brief filed by counsel for defendants in error, at the October term, 1892, in support of their petition to advance these causes, it is admitted as follows:

"The assignments of error bring in question the validity of the act, and the records present the following Federal questions, viz.:

1. Is the act in violation of the first clause of the Fourteenth Amendment to the United States constitution in that

a. It deprives the plaintiffs in error of their property without due process of law;

b. It denies to them the equal protection of the laws?

2. Is the act in violation of the third clause of section 8, article 1, of the constitution, in that it imposes a tax upon commerce among the several States"?

These cases involve a portion of the taxes assessed against the "railroad track" and "rolling stock" of these plaintiffs in error for the tax year extending from April 1, 1891, to April 1, 1892.

Prior to the passage of the tax law of March 6, 1891, the validity of which is involved in these causes, the "railroad track" and "rolling stock" of railway corporations taxable in Indiana, were valued and assessed for taxation by the State Board of Equalization as constituted by the then existing statute of Indiana. This State Board of Equalization was composed, by the law, of the Governor, Lieutenant-Governor, Auditor of State, Treasurer of State, and Secretary of State. The State Board of Equalization for the year 1890 was composed of the following named officers of the State of Indiana, viz: Alvin P. Hovey, Governor; Ira J. Chase, Lieutenant-Governor; Bruce Carr, Auditor of State; J. A. Lemcke, Treasurer of State; and Charles F. Griffin, Secretary of State. In making the assessments and valuations of "railroad track" and "rolling stock," these persons acted under oath, and their acts and doings as the State Board of Equalization were, pursuant to law, printed, and constitute public official records of the State of Indiana.

The P. C. C. & St. L. Ry. Co. Valuation and Assessment of 1891.

Between April 1, 1890, and April 1, 1891, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, one of these plaintiffs in error, was created by the consolidation of several pre existing corporations owning lines of railway, in, or extending into, Indiana.

On April 1, 1891, the entire length of main track of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company was 1145.87 miles, of which 647.42 miles were in Indiana, 27.99 miles were in Illinois, 403.33 miles were in Ohio, 19.48 miles were in West Virginia, and 47.65 miles were in Pennsylvania.

In 1890 the State Board of Equalization valued and assessed for taxation the entire "railroad track" and "rolling stock" of the several lines of railway now constituting the *Indiana portion* of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway at the aggregate sum of $8,538,053.00.

Uncontradicted and unquestioned evidence in the record proves that the true cash value of this same property on April 1, 1891,—no material change whatever having been made in the property,—was the same as that fixed by the State Board of Equalization on July 11, 1890, to-wit: $8,538,053.00.

Yet the State Board of Tax Commissioners, under the pretended law of March 6, 1891, *without any personal examination of the property, and without taking any testimony whatever touching its true cash value*, valued and assessed for taxation this same "railroad track" and "rolling stock" at the aggregate sum of *$22,666,470.00* —an *increase* of *$14,128,417.00* over and above the valuation and assessment of 1890.

That this increase of *nearly two hundred per cent.* in the valuation and assessment of this property for taxation, approaches much nearer to *confiscation* than it does to just and constitutional *taxation*, seems too plain for reasonable controversy.

It is impossible to believe that the State Board of Equalization of 1890, composed of the eminent and honored men above named, were so weak in judgment, or so far forgot the obligation of their oaths, as to value and assess for taxation this property *at $14,128,417.00 less than its true cash value.*

It is equally impossible to believe that the State Board of Tax Commissioners of 1891 could,—without any personal examination, and without taking any testimony,—equitably and constitutionally add nearly *two hundred per cent.* to the sworn assessment of this same property made by the State Board of Equalization in July, 1890.

In June, 1891, the general superintendent and the secretary of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, under their oaths, made and returned to the Auditor of State full and perfect schedules and lists of all of the property of said railway company taxable in Indiana, in which schedules and lists they assessed and valued the "railroad track" and "rolling stock" of said plaintiff in error at $8,255,571.00.

These schedules and lists constitute the entire testimony before the State Board of Tax Commissioners at the time the pretended assessment and valuation of 1891 was made. This fact is proved by the testimony of Hon. Claude Matthews, then Secretary of State for the State of Indiana, and now Governor of Indiana.

J. T. Brooks, Second Vice-President and General

Counsel of the P. C. C. & St. L. Ry. Co. testified that the true cash value of the "railroad track" and "rolling stock" of said plaintiff in error, taxable in Indiana, was, on April 1, 1891, the sum of $8,538,053.00.

It therefore appears that the State Board of Equalization of 1890, under their oaths, assessed and valued for taxation this same "railroad track" and "rolling stock" at $8,538,053.00; that in June, 1891, the proper officers of said P. C. C. & St. L. Ry. Co., under their oaths, assessed and valued for taxation, and returned to the Auditor of State, this same "railroad track" and "rolling stock" at $8,255,571.00; and that the vice-president and general counsel of said plaintiff in error testifies that he knew the true cash value of this same "railroad track" and "rolling stock" and that on April 1, 1891, its true cash value was $8,538,053.00. The record contains no evidence whatever contradicting, or tending to contradict, the truthfulness and correctness of these valuations.

Yet the State Board of Tax Commissioners, under the pretended law of March 6, 1891,—*without personal examination of the property, without taking any testimony touching its true cash value, without any notice whatever to any officer or agent of said plaintiff in error of its intended assessment and valuation of said property, and without giving to said plaintiff in error, or any of its officers or agents, any opportunity whatever to be heard regarding said intended assessment and valuation*,—did, on September 8, 1891, only three days before the expiration of its session and the final dissolution of said State Board by limitation of law, assess and value for taxation the "railroad track" and "rolling stock" of the said P. C. C. & St. L. Ry. Co., within Indiana, at the sum of $22,666,470.00;

and did not give to said plaintiff in error any notice or information of the amount of said assessment and valuation until after the final adjournment and dissolution of said State Board.

Can a law which sanctions, permits, requires or renders possible such action be held to comply with the requirements of the constitution of the United States?

The correctness of the above statements regarding the assessment and valuation for taxation of the "railroad track" and "rolling stock" of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company is substantiated by the record of the cause of that plaintiff in error here presented, as will appear by examination of the following cited parts of that record:

Record in P. C. C. & St. L. Ry. Co. Case, pp. 7 to 12; 25 to 27; 96 to 135; 136 to 145; 145 to 149; 150 to 153.

It is true that the State Circuit Court upon the trial of these causes rejected, and refused to admit, the official report of the assessments and valuations, for taxation, of the "railroad track" and "rolling stock" of these plaintiffs in error made by the State Board of Equalization for the year 1890.

It would be impossible to assign any valid or reasonable ground for this rejection. It is absolutely certain that the assessment and valuation of the "railroad track" and "rolling stock" of these plaintiffs in error, made on July 11, 1890, by the five highest officers of the State of Indiana under their oaths, would *tend to prove* the value of *that same property* on April 1, 1891. The alleged ground of rejection, that the evidence "is irrelevant and immaterial and does not tend to sustain the allegation of the complaint," is utterly untenable.

The complaints expressly allege and set forth the assessments and valuations of the "railroad track" and "rolling stock" of these plaintiffs in error for the year 1890; and expressly aver that said assessments and valuations were the full and true cash value of said property, and that the true cash value of said "railroad track" and "rolling stock" was no greater for the year 1891 than it was for the year 1890.

Record P. C. C. & St. L. Ry. Co. Case, pp. 7, 8.

Record I. & V. R. R. Co. Case, p. 5.

But, fortunately, this rejection of offered testimony cannot embarrass these plaintiffs in error in the presentation of their causes to this Court for several reasons:

The complaints of these plaintiffs in error, which it has already been shown expressly aver and set forth the assessments and valuations, for taxation, of the "railroad track" and "rolling stock" of said plaintiffs, within Indiana, made by the State Board of Equalization for the year 1890, *are sworn to*, and no evidence was offered or introduced by the defendants in error tending, even in the remotest degree, to contradict the averments of the complaints in that regard.

Record P. C. C. & St. L. Ry. Co. Case, pp. 26, 27.

Record I. & V. R. R. Co. Case, pp. 16, 17.

The testimony of J. T. Brooks and H. B. Du Barry, admitted by the trial Court, show, substantially, the amounts of the assessments and valuations for the year 1890,—or give data from which the amounts can be, substantially, made out.

The official printed report of the proceedings of, and the assessments and valuations made by, the State Board of Equalization is a public document, a public

official record of the State of Indiana, to which these plaintiffs in error have full right to refer, whether offered in evidence or not.

THE I. & V. R. R. CO. VALUATION AND ASSESSMENT OF 1891.

The Indianapolis and Vincennes Railroad Company is not an interstate company.

Its line of railway is wholly within Indiana. It neither owns nor operates any railway outside of Indiana. Its railroad extends from Indianapolis to Vincennes. The length of its entire main track is 133.11 miles. The aggregate length of its side tracks is 17.55 miles. This railroad has not for many years been able to earn its operating expenses and its bond interest.

It is in evidence in the record that the total earnings of the road for the year 1890 lacked $160,848.21 of being sufficient to pay operating expenses and fixed charges.

On July 11, 1890, the State Board of Equalization assessed and valued for taxation the "railroad track" and "rolling stock" of the Indianapolis and Vincennes Railroad Company at the aggregate sum of $811,230.00.

Note.—In the printed record in the case of the Indianapolis and Vincennes Railroad Company, there is a misprint on page 5, in the first line of the table of figures. The first line of that table should be, "Total in Marion County, *$73,370.00*," instead of $195,885.00. The same error in the print occurs in the first lines of pages 110 and 111 of the record. The aggregate of $811,230.00 is correct in each instance.

On May 15, 1891, the Indianapolis and Vincennes Railroad Company filed with the Auditor of State its properly verified schedules and assessment lists, in and by which the officers making said sworn returns assessed and valued for taxation the "railroad track" and "rolling stock" of said I. & V. R. R. Co. at the aggregate sum of $666,235.00.

These schedules and assessment lists returned by the railroad company to the Auditor of State constitute all the testimony, or evidence of the true cash value of the property, before the State Board of Tax Commissioners when it made its assessment and valuation of the "railroad track" and "rolling stock" of the said I. & V. R. R. Co.

These same schedules and assessment lists showed that the entire earnings of the road for the year 1890, over and above actual operating expenses, were only *$501.05* per mile, while its bond interest was *$1,699.81* per mile.

Yet the State Board of Tax Commissioners, under the pretended law of March 6, 1891, with these facts before it,—*without any personal examination of the property, and without taking any testimony regarding its true cash value*,—assessed and valued for taxation the "railroad track" and "rolling stock" at the aggregate sum of *$2,684,491.00*.

This is an *increase of more than two hundred per cent.* over and above the assessment and valuation for taxation made by the State Board of Equalization for the year 1890,—no change in the property having been made in the meantime.

J. T. Brooks, Vice-President and General Counsel of the P. C. C. & St. L. Ry. Co., testified that he knew the

true cash value of the "railroad track" and "rolling stock" of the I. & V. R. R. Co., and that on April 1, 1891, its true cash value was $811,230.00.

At the trial, plaintiff in error offered to prove by good and competent testimony that the entire Indianapolis and Vincennes Railroad could have been, in 1891, constructed of new material of like quality with that then constituting its superstructure, equipped with new rolling stock of like character and amount with that then belonging to it, the right of way purchased, and all improvements thereon built and paid for, at an entire cost of not more than $13,000.00 per mile. The assessment and valuation made by the State Board on September 8, 1891, is about *$21,000.00* per mile.

No one believes that the State Board of Equalization in July, 1890, assessed and valued for taxation, the "railroad track" and "rolling stock" of the I. & V. R. R. Co. at *less than one-third* of its true cash value.

The pretended assessment and valuation of 1891 adds *$1,873,261.00* to the assessment and valuation of 1890.

The two assessments cover the *same property*—no more, no less.

It is plain that this erroneous assessment of $2,684,491.00 does not represent the true cash value of the "railroad track" and "rolling stock" of the I. & V. R. R. Co.

From December 1878, the Indianapolis and Vincennes Railroad has been, and still is, operated by the Pennsylvania Company under a lease from the I. & V. R. R. Co. Under this lease the I. & V. Railroad has been operated in connection with the Pittsburgh, Cincinnati, Chicago and St. Louis Railway. These two

facts, taken in connection with the testimony of Hon. Claude Matthews, show conclusively that this $2,684,-491.00 was not fixed as the true cash value of the "railroad track" and "rolling stock" of the I. & V. R. R. Co. *simply as such, and as belonging to a local railroad extending from Indianapolis to Vincennes*, but that large increments of value were fictitiously and arbitrarily assigned to said "railroad track" on account of said lease to the Pennsylvania Company.

It is perfectly evident from Mr. Matthews' testimony that the I. & V. R. R. Co. *is taxed for part of the value of the franchises, terminals, terminal facilities, property and rights of the Pennsylvania Company and the P. C. C. & St. L. Ry. Co.*, under the assessment and valuation made by the State Board. The evidence of Mr. Matthews speaks for itself, and cannot, by any ingenuity of construction, be made to mean any thing else. It is as follows:

And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to-wit:

Q. "State whether or not the State Board of Tax Commissioners, in making and fixing the valuation and assessment of the railroad of plaintiff corporation, for the year 1891, valued said railroad higher, by reason of the fact that the railroad of the plaintiff was under lease to the Pennsylvania Company, and was operated in connection with the railway of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, than said Board valued said railroad apart from its said relationship to said corporation?"

To which question the witness made the following answer, to-wit:

A. "We assessed the railroad track and rolling

stock of plaintiff in the condition in which it actually was, and took into consideration the circumstances stated in the question; *had the plaintiff's road been entirely disconnected from the Pennsylvania Company and the P. C. C. & St. L. Ry. Company, the assessment would not have been placed as high as it was.*"

And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to-wit:

Q. "State what amount in dollars per mile was added to the valuation of plaintiff's railroad by the State Board of Tax Commissioners, by reason of said relationship between the plaintiff and the said corporations, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company?"

To which question the witness made the following answer, to-wit:

A. "Nothing; *the value of the railroad track and rolling stock of plaintiff, independent of the connection named in the question was not assessed nor considered.*"

And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to-wit:

Q. "State how and why said relationship between the plaintiff and the said corporations, the Pennsylvania Company and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company was considered by the State Board as giving to the plaintiff's railroad such additional value?"

To which question the witness made the following answer, to-wit:

A. "As stated in the answer to the preceding question, no additional value was assessed on that account. The assessment was made upon the railroad track and rolling stock of plaintiff *as it was, and not as it was not.*"

It is evident that these answers are not pre-eminent in fairness, that they seek to evade the spirit and intent of the questions, and that, consequently, they are inharmonious with each other. But, notwithstanding all that, they do clearly and beyond question show that the assessment and valuation of 1891 *was not limited and confined to the "railroad track" and "rolling stock" of the I & V. R. R. Co. as such;* but included large increments of value *not inherent in said "railroad track" as the property of the I. & V. R. R. Co.,* but arbitrarily *imputed to it because it was held by the Pennsylvania Company under lease.*

If this is not an attempt to tax *in Indiana* the value of the franchises of the Pennsylvania Company, by adding their estimated value to the "railroad track" of the I. & V. R. R. Co., what is it?

The State Board of Tax Commissioners made their assessment and valuation of the "railroad track" and "rolling stock" of the I. & V. R. R. Co.,—by which it valued at $2,684,491.00 *the same property* that was assessed and valued by the State Board of Equalization on July 11, 1890, at $811,230.00,—on September 8, 1891, only three days before the expiration of its session and its final dissolution, *without personal examination of the property, without taking any testimony touching its true cash value, without any notice whatever to said plaintiff in error, or to its lessee, of, or regarding, its intended assessment and valuation, without giving to said plaintiff in error, or to its lessee, any opportunity whatever to be heard regarding its said intended assessment and valuation, and without giving plaintiff in error, or its lessee, any knowledge or information whatever touching the amount and character of said assessment and valuation until after the final adjournment and dissolution of said State Board.*

Does a law under which such action is possible comply with the requirements of the Fourteenth Amendment to the Constitution of the United States?

The correctness of the foregoing statements regarding the assessment and valuation for taxation of the "railroad track" and "rolling stock" of the I. & V. R. R. Co., one of these plaintiffs in error, is established by the record.

Record I. & V. R. R. Co. Case, pp. 5, 6, 16, 17; 39 to 59; 105 to 107; 108 to 117; and 119 to 125.

THE BILLS OF COMPLAINT.

These suits are for *perpetual injunctions*, to enjoin the collection of portions of taxes purporting to have been assessed by the State Board of Tax Commissioners at its session in 1891, against the "railroad track" and "rolling stock" of these plaintiffs in error.

The complaints in the respective suits of the P. C. C. & St. L. Ry. Co., and the I. & V. R. R. Co., are substantially the same, excepting only certain averments made in the complaint of the P. C. C. & St. L. Ry. Co. by reason of the fact that it is an interstate company holding corporate franchises granted by five different States, and owns "railroad track" and "rolling stock" subject to taxation in each of said States, while the I. & V. R. R. Co. is local to Indiana, its entire property being within Indiana.

The averments of these complaints which are material to the discussion of these causes in this Court may be stated as follows:

1. That by the provisions of the Act of March 6, 1891, the corporate property of complainants, and all other railroad corporations, is, for the purpose of assess-

ment and taxation, arbitrarily divided into four classes, namely:

First. All personal property,—other than that denominated by said statute "rolling stock,"—including tools, supplies, materials for repairs, fixtures and stationary engines. Property of this class is, by said statute, required to be listed, assessed and valued for taxation by the local assessing officers having local jurisdiction where said property may be situated, namely: Township and county assessors and county boards of review.

Second. All real estate of railroad corporations,—other than that denominated by said statute "railroad track,"—with all shops, structures and improvements thereon. This class of property is also, by said statute, required to be listed, assessed and valued as other lots, lands and improvements are listed, assessed and valued, in the county, township, town or city where the same is located; and is made subject to the jurisdiction of, and required to be listed, assessed and valued for taxation by, the local assessing officers, namely: Township and county assessors and county boards of review.

Third. The rights of way, including superstructures, main, side, or second tracks, and turnouts, turntables, telegraph poles, wires, instruments and other appliances and the stations and improvements of railroad corporations on their rights of way,—excepting machinery, stationary engines and other fixtures,—are, by said statute, held to be real estate for the purpose of assessment and taxation, and are designated "railroad track."

Fourth. Operating equipment of railroad cor-

porations, consisting of locomotives and tenders, passenger, freight, mail, express and baggage cars and equipment, and cars and equipment of all kinds used in the operation of railroads, are, by said statute, held to be personal property, and are designated, for the purpose of assessment and taxation, "rolling stock."

The last named two classes of the property of complainants, and of all other railroad corporations, are, by said statute, separated from all other property, real or personal, and are made subject to the sole and exclusive jurisdiction of the State Board of Tax Commissioners, for the purpose of assessment and valuation for taxation.

2. That complainants, as to their "railroad track" and "rolling stock," are, by said statute, *denied the jurisdiction* of the local assessing officers, namely: Township and county assessors and county boards of review,—which jurisdiction is granted to the owners of all property subject to taxation in the State of Indiana,—other than "railroad track" and "rolling stock."

3. That complainants, as to the assessment and valuation of their "railroad track" and "rolling stock," are, by said statute, *denied any hearing* before county boards of review; and are *denied any appeal* from county boards of review to the State Board of Tax Commissioners;—which rights of *hearing* and *appeal*, are valued and valuable privileges and immunities granted to the owners of all property subject to taxation in the State of Indiana, other than "railroad track" and "rolling stock."

4. That the *two classes* of the property of complainants, and of all other railroad corporations, denom-

inated by said statute "railroad track" and "rolling stock," are by said statute, *singled out and separated from all other property* subject to taxation in the State of Indiana; and *are assessed and valued for taxation by a distinct, separate, discriminating and unequal method of assessment and valuation, from any and all other property subject to taxation in said State.*

5. That the "railroad track" and "rolling stock" of complainants, and of all other railroad corporations, is by said statute, subjected to an *ununiform and unequal rate of assessment and taxation*, with all other property subject to taxation in the State of Indiana.

6. That no *notice* is required by said statute, to be given to complainants by said State Board of Tax Commissioners, fixing the time when the "railroad track" and "rolling stock" of complainants would be assessed and valued for taxation; and that *no such notice* was given to complainants.

That said statute does not *require* said State Board of Tax Commissioners *to grant any hearing whatever to complainants, touching the assessment and valuation of their "railroad track" and "rolling stock," either with or without notice.*

That no *notice* whatever was given to complainants by said State Board of Tax Commissioners, after it made said pretended assessment and valuation of the "railroad track" and "rolling stock" of complainants; and no *hearing, or opportunity to be heard*, was granted to complainants by said State Board of Tax Commissioners after said Board made said pretended assessment and valuation of the "railroad track" and "rolling stock" of complainants.

That the "railroad track" and "rolling stock" of

complainants, and of all other railroad corporations owning or operating lines of railway within the State of Indiana, were assessed and valued for taxation by said State Board of Tax Commissioners—as shown by the records and proceedings of said State Board of Tax Commissioners—on September 8, 1891. That said State Board of Tax Commissioners finally adjourned on September 11, 1891. That no notice whatever of the assessment and valuation of their "railroad track" and "rolling stock," as made by said State Board of Tax Commissioners, was given to complainants, until after the final adjournment of said State Board of Tax Commissioners; and that no hearing, or opportunity to be heard, was granted to complainants by said State Board of Tax Commissioners regarding said pretended assessment and valuation of their "railroad track" and "rolling stock."

That the owners, or representatives, of all property subject to taxation in the State of Indiana,—*excepting only owners, or representatives, of "railroad track" and "rolling stock,"*—are by said statute, required to be served with *notice*, and are granted a full *hearing*, before any change can be made in their assessment lists and valuations, and before any final assessment and valuation of their property is made for the purpose of taxation.

7. The complainant in each of these bills of complaint sets out in full the assessment of its "railroad track" and "rolling stock" for the year 1890, as made by the State Board of Equalization, and avers that said assessment for 1890 was a full and just assessment of complainant's "railroad track" and "rolling stock," within the State of Indiana; and that complainant's "railroad track" and "rolling stock" within Indiana

were of no greater taxable value in the year 1891 than they were in the year 1890.

Each complainant then sets out in full the pretended assessment and valuation of its "railroad track" and "rolling stock" within the State of Indiana, as made by the State Board of Tax Commissioners, on September 8, 1891; and avers and charges that said State Board of Tax Commissioners made said pretended assessment without personal examination; without the introduction of any testimony showing the true cash value of complainant's "railroad track" and "rolling stock," and without any knowledge of the true cash value thereof; and that said assessment does not represent the true cash value of the "railroad track" and "rolling stock" of complainant, but, on the contrary, is grossly exorbitant, unjust, inequitable, unequal, ununiform and fraudulent.

8. That said pretended assessment is largely made up by wrongfully, arbitrarily and unlawfully assigning to the "railroad track" and "rolling stock" of complainant, within Indiana, large increments of value belonging and pertaining wholly and solely to the "railroad track" and "rolling stock" of complainant in other States, and fully taxed in said other States; and that said importation of values of complainant's property, situated and wholly used in other States, and assigning said imported values to complainant's property in Indiana, has resulted in the *double taxation* of complainant's property in Indiana, and is a fraud upon complainant's rights, and renders the pretended assessment unequal, ununiform, unjust, fraudulent and void.

9. That if said statute grants, or purports to grant, said State Board of Tax Commissioners authority to

increase the value of complainant's "railroad track" and "rolling stock," in Indiana, by importing and assigning to it valuations belonging wholly to complainant's property in other States, said statute is unconstitutional and void, because it is an attempt to tax in Indiana property beyond the boundaries of, and without the jurisdiction of, said State of Indiana.

10. That the assessment of complainant's "railroad track" and "rolling stock" as made by said State Board of Tax Commissioners, is exorbitant, unequal, unjust, and is based largely on fictitious, imported and assigned values, which do not belong or pertain to complainant's "railroad track" and "rolling stock," in Indiana, is conclusively proved by a comparison of said assessment of complainant's "railroad track" and "rolling stock," with the assessments of other "railroad track" and "rolling stock," made by said State Board of Tax Commissioners. In connection with these averments comparisons of the assessment of complainant's "railroad track" and "rolling stock" with other assessments of like "railroad track" and "rolling stock," are set forth.

11. That said assessment was made,—not only by importing and assigning to complainant's "railroad track" and "rolling stock," in Indiana, large increments of value, that do not belong to it, but do belong to complainant's property in other States, and are fully taxed in said other States,—but also by arbitrarily, fictitiously and unlawfully assigning to complainant's "railroad track" and "rolling stock," in Indiana, large increments of value, based upon the assumed entire earning capacity of complainant, as the owner and operator of an interstate railway, chiefly engaged in transporting interstate commerce from States west of

Indiana, to the seaboard; and that said pretended assessment is, therefore, a direct attempt upon the part of said State Board of Tax Commissioners *to tax interstate commerce*, by assigning fictitious and arbitrary values to complainant's "railroad track" and "rolling stock," in Indiana,—far in excess of the "true cash value" thereof,—simply because complainant's "railroad track" and "rolling stock," within the State of Indiana, taken in connection with complainant's "railroad track" and "rolling stock" situated in other States, constitutes an instrument for the carrying on of interstate commerce.

12. That no notice, hearing, or opportunity to be heard, for the purpose of correcting the gross errors, inequalities and overvaluations of complainant's "railroad track" and "rolling stock" contained in said pretended assessment was given to complainant, by said State Board of Tax Commissioners.

13. That the true cash value of the "railroad track,"—27.99 miles,—of complainant situated in Illinois, together with the improvements thereon, is five times as great as the true cash value of any equal number of miles of the "railroad track," together with the improvements thereon, of complainant situated in Indiana. That the three miles of complainant's "railroad track," and terminals, situated in the cities of Pittsburgh and Allegheny, in the State of Pennsylvania, are worth far more than five times as much as any three miles of complainant's "railroad track," and terminals, situated in Indiana.

That all of complainant's said "railroad track" and terminal facilities are fully taxed in said States of Illinois and Pennsylvania.

That in and adjacent to the cities of Chicago, Illinois, and Pittsburgh, Pennsylvania, complainant owns and operates a very large and valuable equipment of "rolling stock" used and operated wholly and solely in urban and suburban traffic and transportation in and near to said cities of Chicago and Pittsburgh, no part of which "rolling stock" and equipment is ever used or operated upon or over complainant's lines of railway in Indiana, or in any manner in connection with the traffic and transportation carried on over and upon complainant's lines in Indiana; that in the State of Ohio, complainant has a very large and valuable equipment of "rolling stock" used and operated wholly and solely in said State of Ohio, in the transportation of coal, ores and minerals from and to points in said State of Ohio, and no part of which is ever used or operated upon or over complainant's lines of railway in Indiana, or in any manner in connection with the traffic and transportation carried on over and upon complainant's lines of railway situated within Indiana; that all of said special and separate equipments and "rolling stock" are fully taxed in the States of Illinois, Ohio and Pennsylvania; that complainant has not and does not use or operate any such like separate and distinct equipments, and "rolling stock," upon any part of its railway within Indiana, either for urban or suburban traffic, or for special transportation of coal, ores and minerals from and to points within Indiana, but that the entire traffic and transportation on the lines of railway of complainant within Indiana is confined wholly to ordinary local and interstate traffic and transportation; and that in its said assessment and valuation for taxation of complainant's "railroad track" and "rolling stock," *said State*

Board of Tax Commissioners has apportioned and assigned to complainant's railway in Indiana, and has assessed and valued for taxation in Indiana, a large proportion of said special equipments and "rolling stock" procured by complainant for said special uses in, and wholly and solely used and operated in, said States of Illinois, Ohio and Pennsylvania, and fully taxed in said States; which action of said State Board has resulted in the *double taxation* of a very large portion of the entire equipment and "rolling stock" of complainant.

14. That before the commencement of this suit, complainant paid, or tendered, to each of said defendants, as county treasurers and tax collectors, the full amount of all taxes for the entire year of 1891, assessed upon the *first two classes* of complainant's corporate property, herein before designated and classified, as assessed by the local assessing officers, namely: Township and county assessors and county boards of review; and at the same time paid, or tendered to each of said defendants, the full amount of taxes justly, equitably and lawfully due upon complainant's "railroad track" and "rolling stock,"—upon a just and lawful assessment thereof,—within said several counties, townships, cities and towns, for the entire year 1891.

That said wrongful, unjust, inequitable and unlawful assessment and valuation for taxation, of complainant's "railroad track" and "rolling stock" made by said State Board of Tax Commissioners, constitutes, and is, a cloud upon the title of complainant's corporate property, which a court of equity has full power and jurisdiction to remove by its decree.

That said several county treasurers and tax collectors are joined as defendants, to the end that a *multi-*

plicity of suits may be avoided; and to the end that a complete and final determination and settlement of the rights and questions involved,—which are common to all of said defendants,—may be had and made in one litigation.

That said assessment and valuation of complainant's "railroad track" and "rolling stock," made by said State Board of Tax Commissioners, *is a single, entire, unit assessment and valuation of complainant's entire "railroad track" and "rolling stock" within the State of Indiana, regardless of the boundary lines of counties, townships, cities and towns.* And that, therefore, a single suit to enjoin the collection of all taxes extended upon said single, entire, unit assessment, is within the jurisdiction of, and properly cognizable by, a court of equity.

That notwithstanding said payments, and tenders of payments, of all taxes justly and equitably due from complainant, upon its corporate property for the year 1891, said defendants are claiming and asserting the right to enforce payment of the entire taxes as extended upon their several tax duplicates, upon said wrongful, unjust, unlawful and void assessment made by said State Board of Tax Commissioners; and will, unless restrained and enjoined by decree of court, attempt to enforce payment of said unjust, wrongful, unlawful and void taxes.

Each of these bills of complaint avers the exact amounts of taxes paid and received, and the amounts of taxes tendered and refused; and complainants bring into court the amounts of taxes so refused, and keep their tenders good.

15. That the pretended assessment of complain-

ant's "railroad track" and "rolling stock," made by said State Board of Tax Commissioners at its session in the year 1891, was, and is, without right, without authority of law, without due process of law, inequitable, unequal, ununiform, unconstitutional and void, for the following reasons:

First. Because the sections, clauses and provisions of said Act of March 6, 1891, relating to the assessment, valuation and taxation of the *two classes* of property denominated "railroad track" and "rolling stock," and purporting to confer jurisdiction and authority upon said State Board of Tax Commissioners to make original and final assessment and valuation of said two classes of complainant's property, are unconstitutional and void, because they are in conflict with Article 1, Sections 12 and 23, of the Constitution of the State of Indiana; and with Section 1, of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit: That complainant,—as to the assessment and valuation for taxation of the said *two classes* of its property,—is *denied the jurisdiction* of the township assessors, county assessors and county boards of review of the several counties in which its property is situated, and through or into which its line of railway extends; and is *deprived* of the *right of appeal* from said county boards of review to the said State Board of Tax Commissioners, as an *appellate tribunal* in which complainant could compel a hearing in its behalf for the protection of its rights and property,—which *jurisdiction* and *right of appeal* are valued and valuable privileges and immunities granted by said statute to all other taxpayers, prop-

erty holders and citizens of said State,—excepting only railroad corporations.

Second. Because said Act of March 6, 1891,—in so far as it relates to the assessment, valuation and taxation of the two classes of property denominated "railroad track" and "rolling stock" of railroad corporations, and in so far as it purports to confer jurisdiction and authority upon said State Board of Tax Commissioners to make original and final valuation and assessment for taxation of said two classes of the corporate property of complainant,—is unconstitutional and void, because it is conflict with Article 1, Section 12, of the Constitution of the State of Indiana; and with the Fifth Amendment, and Section 1 of the Fourteenth Amendment, to the Constitution of the United States, in this, to-wit: That no provision whatever is made by said statute requiring any *notice* whatever to be given to the complainant by said State Board of Tax Commissioners, of any action taken by, or in contemplation to be taken by, said State Board of Tax Commissioners, touching the valuation, assessment and taxation of the said two classes of the property of complainant, to the end that the complainant might be present, or be represented, in defense of its rights and property against the said valuation, assessment and taxation made by said State Board of Tax Commissioners; and because said statute does not provide for, or reserve to, complainant *any right to any hearing* before said State Board of Tax Commissioners, and utterly fails to *require* said State Board of Tax Commissioners *to hear* complainant regarding the valuation, assessment and taxation of

the said two classes of the property of complainant, either with or without notice.

Third. Because the sections, clauses and provisions of said Act of March 6, 1891, relating to the listing, valuation, assessment and taxation of the *two classes* of the property of railroad corporations denominated "railroad track" and "rolling stock," under which the State Board of Tax Commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and valuation for taxation, of said two classes of the corporate property of complainant, are unconstitutional and void, because they are in conflict with Article 10, Section 1, of the Constitution of the State of Indiana, in this, to-wit: That the said two classes of the corporate property of complainant are not, and under the provisions and requirements of said statute cannot be, listed, valued, assessed and taxed at a *uniform and equal rate* of valuation, assessment and taxation with other real estate and personal property in said State of Indiana, but, on the contrary, are listed, valued, assessed and taxed, —and by the provisions and requirements of said statute, are required to be listed, valued, assessed and taxed,—by a *distinct, separate, different and discriminating method* from, and at an *ununiform and unequal rate* of valuation, assessment and taxation with, other real estate and personal property in said State of Indiana.

Fourth. Because the sections, clauses and provisions of said Act of March 6, 1891, relating to the listing, valuation, assessment and taxation of the two classes of the property of railroad corporations

denominated "railroad track" and "rolling stock" under which said State Board of Tax Commissioners claimed and asserted jurisdiction and authority to make said original and final assessment and valuation for taxation of said two classes of the corporate property of plaintiff, are unconstitutional and void, because they are in conflict with Article 4, Section 22, of the Constitution of the State of Indiana; and with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit: That said sections, clauses and provisions of said statute, constitute a *special law* for the listing, valuation, assessment and taxation of said *two classes* of the corporate property of railroad corporations, other and different from the general law providing for the listing, valuation, assessment and taxation of other real estate and personal property in said State of Indiana, unjustly discriminating against complainant and other railroad corporations, and increasing the burden of taxation upon said two classes of the property of complainant, far beyond the burden imposed upon other real estate and personal property in said State of Indiana, of equal cash value with said two classes of the corporate property of complainant.

Fifth. Because the sections, clauses and provisions of said Act of March 6, 1891, relative to the listing, valuation, assessment and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock," under which said State Board of Tax Commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and

valuation for taxation, of said two classes of the corporate property of complainant, are unconstitutional and void, because they are in conflict with Article 1, Sections 12 and 23, and Article 10, Section 1, of the Constitution of the State of Indiana; and with Section 1 of the Fourteenth Amendment to the Constitution of the United States, in this, to-wit: That said sections, clauses and provisions of said statute provide, require, and result in, an unjust, unequal and discriminating valuation, assessment and taxation of said two classes of property belonging to railroad corporations, as compared with other real estate and personal property in said State of Indiana; whereby the privileges and immunities of complainant corporation, and other railroad corporations, as citizens of the United States, engaged in interstate commerce, are abridged; their property is taken without due process of law; and they are denied the equal protection of the laws in the manner following, namely: That said State Board of Tax Commissioners, in making said assessment and valuation for taxation of said two classes of the corporate property of complainant, did not limit its consideration to the fair cash value of said two classes of the corporate property of complainant within said State of Indiana, and did not make said assessment and valuation as measured by the fair cash value of the said two classes of the property of complainant within the limits of Indiana, but, on the contrary imported and assigned to said classes of the property of complainant actually within said State of Indiana, and properly subject to taxation therein, a very large increase of value dependent wholly upon,

and belonging to, the corporate property of complainant situated in other States, and duly taxed in said other States. That said fictitious values so imported and assigned to said two classes of the property of complainant actually within said State of Indiana, by reason of the fact that complainant owns valuable railways, equipment and terminal facilities in other States, which are used and operated in connection with the railway and equipment of complainant within said State of Indiana, has resulted in the *double taxation*, to a large degree, of said two classes of the corporate property of complainant within said State of Indiana, and has become, and is, a serious burden upon the interstate commerce carried on by complainant, and was, and is, an unjust, unequal and illegal method of assessment and valuation of the said two classes of property of complainant, within said State of Indiana. That the railway, equipment, terminal facilities and property of complainant situated in Illinois, Ohio, West Virginia and Pennsylvania, are fully taxed in said States, and, therefore, all increase of valuation imported and assigned to the said two classes of the property of complainant within the State of Indiana, by reason of its physical connection with the railways and property of complainant situated in said other States, results in *double taxation* to the extent of such increase of valuation, and is, therefore, unjust, unequal and illegal.

Sixth. Because said Act of March 6, 1891, in so far as it permits or purports to permit or require the taxation of the "railroad track" and "rolling stock" of railroad corporations engaged in the

transportation of both State and interstate commerce, upon an assessment and valuation determined by, and based upon the amount of their gross and net earnings, derived from *all* their traffic and transportation, both that originating and ending wholly in Indiana, and their interstate traffic and transportation, is unconstitutional and void, because in violation of, and in direct conflict with Section 8, Article 1, of the constitution of the United States: Because to impose a tax upon property according to its valuation as determined by, and based upon, the interstate commerce transported by that property, is, in effect, to tax interstate business, and is a tax upon interstate commerce.

Seventh. Because said act of March 6, 1891, in so far as it purports to grant power and authority to said State Board of Tax Commissioners to assess taxes against railroad corporations upon personal property and equipment leased or hired by them, and to hold such railroad corporations liable for taxes upon such leased or hired personal property and equipment, whether in possession and use on April 1st or not, and whether duly taxed in other States or not; and in so far as it purports to confer upon said State Board of Tax Commissioners power and authority to assess and value for taxation, property and values not within the State of Indiana, and "rolling stock" and equipment never used or operated within the State of Indiana, is unconstitutional and void, because it is in violation of and in conflict with, Section 23, Article 1, and Sections 22 and 23, Article 4, of the constitution of the State of Indiana, and with Section 1, of the Fourteenth

Amendment to the constitution of the United States.

The complaints appear in full in the records.

Record P. C. C. & St. L. Ry. Co. Case, pp. 2 to 27.

Record I. & V. R. R. Co. Case, pp. 2 to 17.

ANALYSIS OF THE TAX LAW OF MARCH 6, 1891.

A duly certified copy of the entire Act of the Legislature, approved March 6, 1891, concerning taxation, is bound,—as an appendix,—with each copy of this brief filed in these causes, and now submitted to this Court. An examination of this entire law will, it is believed, prove the following analysis to be substantially correct:

Under this law all taxable property, real and personal, is divided into *two separate and distinct classes*, for the purpose of assessment and valuation for *ad valorem* taxation, as follows, viz:

Class One. The first class includes: 1. All real estate,—*excepting only that part of the real estate and property of railway corporations designated and described in Section 78 of said law, and therein denominated "railroad track."*

2. All personal property of every character and description,—*excepting only that part of the personal property of railway corporations designated and described in Section 80 of said law, and therein denominated "rolling stock."*

Class Two. The second class includes: 1. All "RAILROAD TRACK:" which is defined by said law as follows: "Sec. 78. Such right of way, including the superstructures, main, side or second track and turnouts,

turn-tables, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued."

2. All "ROLLING STOCK:" which is defined by said law as follows: "Sec. 80. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, 'rolling stock.'"

The duty of assessing and valuing for taxation all property, real and personal, subjected to *ad valorem* taxation in the State of Indiana, is, by this law, imposed upon the following named officers and official boards, namely: Township assessors, county assessors, county auditors, county treasurers, county boards of review, and the State Board of Tax Commissioners.

The assessment and valuation, for taxation, of all of the property above described as constituting *Class One*,—that is to say, *all* of the property taxable in the State *excepting only* "*railroad track*" *and* "*rolling stock*,"—is committed to, and devolved upon, the *local assessing officials*, namely: Township assessors, county assessors, county auditors, county treasurers, and county boards of review.

It will be observed that, under this *division* and *classification* of property for the purpose of assessment and valuation for taxation, the entire force of the division and classification is expended in *dividing*, *sub-dividing* and *classifying* the property of RAILWAY CORPORATIONS.

This classification and division of railway property is carefully stated in the synopsis of the bills of complaint, *supra*, pp. 17, 18, 19.

This division of railway property into different classes, and subjecting parts of it to the jurisdiction of the local assessing officials, and other parts of it to the jurisdiction of the State Board of Tax Commissioners is effected by Sections 81, 82, 83, 84 and 137 of the law under consideration.

Under this law the method and operation of assessing and valuing all property subject to *ad valorem* taxation,—*excepting "railroad track" and "rolling stock,"*—is as follows:

The township assessors have full jurisdiction over the assessments and valuations *in the first instance.* Assessments and valuations of personal property are made by the owner or representative thereof, upon assessment lists or schedules furnished by the assessor. The owner, or representative, is required to make oath to the correctness of the assessment and valuation of his personal property so made by himself. If the owner fails or refuses to make out and verify the assessment and valuation of his property upon the blank list or schedule furnished him by the assessor, it then becomes the duty of the assessor to make out the assessment and valuation upon the best information he can obtain.

Real estate is assessed and valued for taxation every *fourth* year. It is listed and described by the *owner* upon blank schedules furnished him by the assessor. When the valuation is completed the assessor is required to give to the owner of the real estate valued a memorandum showing the description and valuation of each

tract or parcel of land and giving the owner *notice* of the time when the county board of review will meet for the purpose "*of hearing and determining grievances.*"

The township assessors return all of the assessments and valuations to the county auditor.

The provisions of law, defining the powers and duties of township assessors, as above summarized, will be found in Sections 48 to 66 inclusive, and 93 to 111 inclusive.

At any time before he returns the assessment and valuation lists to the county auditor, the township assessor has the power to add omitted property to the assessment list made out and verified by any owner, and to increase the valuation as made and listed by the owner, if he believes that taxable property has been omitted by the owner in making out the assessment list, or that the owner has not returned the full value of the property listed and valued by him; *but the township assessor cannot make any such addition of supposed omitted property, or any increase in the valuations made by the owner in his sworn assessment and valuation schedule, without first giving to such owner written notice of his intention to change his assessment list, specifying the changes proposed to be made, and fixing a time and place when and where the owner may be heard, and may show cause why the assessment and valuation of his property as made by him should not be changed.*

This important provision is found in Section 108.

County assessors, county auditors and county treasurers, also, have the power to add supposed omitted property to, and to increase the valuations of property listed and valued on the assessment schedules made out by the owners or representives of the property, in their

respective counties; *but they cannot exercise that power in any case without first giving to the owner, or representative, whose assessment and valuation schedule it is proposed to change, notice of the proposed change, and a full opportunity to be heard regarding such proposed change.*

Sections 108,—*last clause*,—113, 142 and 182.

County boards of review, also, have this same power of revision and reassessment. They can add supposed omitted property, and can increase the valuations made by owners, or representatives, of property listed, assessed and valued by them in their sworn assessment schedules: *but they cannot add property to, or change the valuations as made in, the schedules of the owners, or representatives, without first giving to such owner, or representative, written notice, and an opportunity to be heard regarding such proposed change in his assessment list or schedule.* Section 114.

It, therefore, appears that, as to *all* property subject to *ad valorem* taxation,—*excepting "railroad track" and "rolling stock,"*—this law contains careful provisions and proper safeguards for the protection of the tax payer from unequal, unjust, arbitrary and oppressive taxation. In effect the owner, or representative, of property makes out his own assessment and valuation for the taxation of his property, under his oath, *and that assessment and valuation cannot be changed without first giving him notice and an opportunity to be heard regarding any proposed change.*

Again. If the owner, or representative, of any property subject to *ad valorem* taxation,—*excepting only "railroad track" and "rolling stock,"*—is dissatisfied with the action of either the township assessor, the county assessor, the county auditor, or the county treasurer,

regarding the assessment and valuation of his property for taxation, *he can take his complaint before the county board of review, and have his property reassessed by that board upon a hearing.*

If he is still dissatisfied with the result, *he can transfer his case to the State Board of Tax Commissioners, which board is* REQUIRED *to give him a hearing, and, upon such hearing, determine the assessment and valuation of his property for taxation.* Sections 114 and 125.

If not one of these protective provisions and safeguards against unequal, unjust, arbitrary and oppressive taxation can be found in this law, as applicable to the assessment and valuation of "*railroad track*" and "*rolling stock;*" if, not only no like or kindred protective provisions and safeguards can be found in the law, but no protection whatever is granted by it to the owners of "railroad track" and "rolling stock;" if, after expressly and repeatedly providing for notice to, and requiring that a hearing be given to, the owners of all other property, before any change can be made in the assessments and valuations for taxation made by the owners themselves, the law is silent and dumb regarding any notice or hearing to be granted to the owners of "railroad track" and "rolling stock" touching immense increases and additions proposed and intended to be made to their sworn assessments and valuations thereof; is it not plain that the Legislature did not intend to give, and by this law did not give, to the owner of "railroad track" and "rolling stock" any like, *or equal*, protections and safeguards against unjust and arbitrary taxation, to those freely and expressly given to the owners of all other property subject to taxation?

With the foregoing analysis of this law, in so far

as it affects the assessment and valuation for taxation of all property subject to *ad valorem* taxation,—excepting only "railroad track" and "rolling stock,"—in mind; and bearing in mind the fact that *exclusive* jurisdiction over the assessment and valuation of "railroad track" and "rolling stock" is by this law vested in the State Board of Tax Commissioners; the attention of the Court is earnestly invited to the consideration of the provisions of this law creating and defining the

POWERS AND DUTIES OF THE STATE BOARD OF TAX COMMISSIONERS.

The provisions creating this State Board and prescribing, limiting and defining its powers and duties will be found in Sections 117 to 141, inclusive.

By Section 117, the State Board of Tax Commissioners is created; this Board consists of the three chief executive officers of the State government, namely: The Governor, Auditor of State, and Secretary of State; together with two commissioners appointed by the Governor.

The powers and duties of the State Board of Tax Commissioners are clearly and expressly defined by the statute; they are as follows:

First. "The State Board of Tax Commissioners shall, annually, convene in the office of the Auditor of State, on the first Monday of August each year, *for the purpose of assessing railroad property and equalizing the assessment of real estate as provided in this act.*"

Section 129.

Second. "Said Board shall also *assess* the railroad property denominated in this Act as '*railroad track*' and '*rolling stock*' at its true cash value." Section 137.

Third. "Appeals shall lie from the decision of any county board of review to the State Board of Tax Commissioners, *which shall hear and determine the same*, in such manner as it may by its rules prescribe, and certify its decision, which shall be *final*, to the proper county auditor." Section 125.

Fourth. "It shall be the duty of said Board to examine the abstracts of all the *real property* assessed for taxation in the several counties of this State, as returned by the Auditor of State, and shall equalize the assessments as hereinafter provided." Section 133.

Fifth. "Said Board, in equalizing the valuation of property as listed and assessed in the different counties *shall consider the following classes of property* separately, viz: *Railroad property, lands, and town and city lots*, and upon such consideration determine such rates of addition to or deduction from the listed or assessed valuation of *each of said classes of property* in each county, or to or from the aggregate assessed value of each of *said classes* in the State, as may be deemed by the board to be equitable and just." Section 135.

Sixth. "Counties shall be equalized by adding to the aggregate value of the *lands, town and city lots*, in every county in which said board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too high, such per centum as will reduce the same to its proper value as defined in this act." * * * "When said board shall have separately considered the *several classes of property as hereinbefore required*, the result shall be combined in one table and the same shall

be examined, compared and perfected in such manner as said board shall deem best to accomplish a just equalization of assessment througout the State, preserving, however, the principle of separate rates for each class of property." * * * "When said board shall have completed its assessments and its equalization of assessments, for any year, it shall certify to the Auditor of State the rates finally determined by said board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board."

Sections 136, 138, 139.

Seventh. By section 120, it is made the duty of the State Board of Tax Commissioners: 1. To prescribe all forms and blanks used in the assessment and collection of taxes. 2. To construe the tax and revenue laws and instruct the local assessors and officers with reference to taxation and assessments. 3. To see that all assessments are made by the local assessors according to law. 4. To see that all railroads and other corporations are assessed according to law. 5. To see that the taxes due the State are properly collected. 6. To enforce penalties for disobedience of the tax laws. 7. To determine the amount required to be levied upon property to cover any deficiency in the State revenue. 8. To examine all books, papers and persons necessary to enable the board to acquire information to aid it in securing a compliance with the tax laws. 9. To make rules and regulations for the carrying into effect the purposes for which the board was constituted. 10. To report to the General Assembly the amount of revenue collected in the State, classifying as to State, county, township and municipal purposes, and such other in-

formation concerning the public revenues, as they may deem of public interest. 11. To investigate the revenue laws and systems of other states and countries, and upon such information make recommendations to the General Assembly regarding amendments to the tax and revenue laws. 12. To see that each county in the State is visited by one member of the Board once in each year, to investigate the workings of the tax law, and to enable the Board to make proper suggestions regarding amendments to the law.

By Section 126, it is provided that: "The duties imposed by this Act, as specifically set out in section 120, so far as the same can be consistently done, shall be done and performed *by the two members of the Board specially chosen to act as such, and the Governor, Auditor and Secretary of State shall only be required to sit with the Board and take part in its proceedings when performing the duties heretofore devolving upon the State Board of Equalization*, and at such other times and under such other circumstances as may be rendered necessary in order to effectually carry out the purposes of this Act."

It is perfectly evident that the duties enjoined by section 120, are, and were designed to be, simply administrative and advisory, and that,—as clearly shown by section 126,—it was the design and purpose of the Legislature to have the two Tax Commissioners attend to, and perform, the duties required by section 120. An examination of those duties as above listed, will show that the two Tax Commissioners could well perform every duty enjoined by that section, excepting only the ninth. They could not pass rules and regulations by themselves; every other duty enjoined by the section they could, and do, perform.

These seven items, defining the powers and duties of the State Board of Tax Commissioners, as above set forth, contain *all of the powers and duties* granted to, and enjoined upon, that Board by this law.

The powers and duties of the State Board of Tax Commissioners may, therefore, be briefly summarized thus:

1. To *assess* the *two classes* of railroad property denominated in the Act as "*railroad track*" and "*rolling stock.*"

2. To *equalize* the assessment of real estate, and the above named classes of railroad property between the different counties of the State.

3. To hear and determine appeals from the county boards of review.

4. To take general oversight as to the administration of the tax laws.

5. To report the results of equalization between counties, and the assessments of said two classes of railroad property to the Auditor of State, and to report to the Legislature, as to the general workings of the law, suggesting amendments and modifications therof.

The only property over which the State Board of Tax Commissioners is given *original and exclusive jurisdiction*, for the purpose of making assessments and valuations for taxation, is "*railroad track*" and "*rolling stock.*"

It has no power to assess *any other items* of the property of railway corporations. Its power to make original assessments is strictly limited to these *two items* of the *tangible property* of railway companies, viz: "railroad track" and "rolling stock." These two items of property are so carefully and minutely defined

and described by the law that it is impossible to make any mistake as to just what property is covered by the items "railroad track" and "rolling stock." They cover *part* of the *tangible property* of railway corporations, and *nothing else.* This is too clearly shown by the law for any possible controversy.

Sections 78 to 85, inclusive.

It has no power to *assess* the *charter* or *franchises* of any railway corporation, whether it possesses only a franchise granted by Indiana alone, or franchises granted by several different States, including Indiana.

It has no power to *assess leases, traffic agreements, and operating contracts with other corporations.*

It has no power to *assess* the *capital stock*,—which embraces and represents all the corporate assets,—of any railway corporation; or its "*good will*" or *business*,—whether wholly local, or both interstate and local.

It has no power to *assess* any "RAILROAD" or "RAILROADS." It can only assess *two items* of the many items of property, tangible and intangible, covered by the term "*railroad.*"

The certificate appended by the State Board of Tax Commissioners to its assessments and valuations here complained of, states that said board "has fixed the *values* of the respective *railroads* and parts of *roads* within the State of Indiana *for taxation* on the first day of April, 1891, as hereinbefore set forth."

Record P. C. C. & St. L. Ry. Co. Case, p. 110.
Record I. & V. R. R. Co. Case, p. 50.

This certificate certainly shows the exercise of *excessive jurisdiction* by the State Board.

The law provides: "Said Board shall also assess

the railroad property, denominated in this Act as 'railroad track' and 'rolling stock,' *at* ITS *true cash value.*" Section 137.

That is the beginning and *the end* of its power to assess any of the property of railway corporations. If the certificate of the State Board is true, the entire assessment of railroad property made by it is void on account of the exercise of excessive jurisdiction.

NO NOTICE IS REQUIRED BY THIS LAW TO BE GIVEN TO RAILWAY CORPORATIONS.

It has already been shown that this law *requires notice to be given* to the owners, or representatives, of all property subject to *ad valorem* taxation,—other than "railroad track" and "rolling stock,"—*before* any change can be made in the items of property as listed, or in the assessments and valuations as made, by such owners or representatives in their verified schedules returned by them to the township assessors.

In five different sections of this law such *notice* is *expressly required*, viz: Sections 108, 113, 114, 142 and 182.

But this law does not require the State Board of Tax Commissioners to give to railway corporations, or their representatives, any notice whatever touching any intended or proposed increase or change in the lists, assessments and valuations of their "railroad track" and "rolling stock," made, scheduled and returned by such railway corporations under oath. Sections 85, 87, 129, 137.

When the law expressly requires notice to be given in five cases out of six,—as is the case here,—and does not require notice to be given in the sixth case, such omission is very clear, if not conclusive, evidence that

the Legislature did not intend that the party in interest in the sixth case should have any notice.

This law does not even require notice of the time and place of the meeting of the State Board of Tax Commissioners to be given by publication. The law fixes the time and place of the meeting of the State Board, but requires no notice thereof by publication or otherwise. Section 129.

This same law also fixes the time and place of meeting of county boards of review; but it also *requires* two weeks' *notice* of the time, place and purpose of the meeting to be given by publication in a newspaper, or by posting up notices in three public places in each township of the county; *and in addition to this notice by publication, requires particular and express notice to be given to every owner, or representative, of property subject to taxation,—excepting "railroad track" and "rolling stock,"—of any proposed or intended increase in the assessment and valuation of his property as listed, assessed and valued by such owner in his schedule made and returned under his oath.* Section 114.

Why this difference? Is not this purposed *discrimination against railway corporations* as to the assessment and valuation of their "railroad track" and "rolling stock"?

Notice of the time when, and the place where, an act inimical to the interests of a person is to be performed, is of no value *unless the law, in addition to the notice, gives to that person the right to be heard in defense against the threatened act.*

No Hearing is Required by this Law to be given to Railway Corporations.

The owners, or representatives, of all property

subject to *ad valorem* taxation in Indiana,—*excepting only "railroad track" and "rolling stock,"*—not only have ample notice given them of any intended or threatened increase in their tax lists, assessments and valuations, as has already been shown; *but they are also, by the express requirements of the law, given a hearing in every case, and are assured an opportunity to defend against the intended or threatened increase, with full knowledge of the amount of the threatened increase and of what it is composed.*

Township assessors are *required to grant such hearing.* Section 108.

County assessors, auditors and treasurers are *required to grant such hearing.*

Sections 108,—last clause,—113, 142, 182.

County boards of review are *required to grant such hearing.* Section 114.

Even the State Board of Tax Commissioners is *required* to grant a *hearing* to any taxpayer who appeals from the assessments and valuations made against him by the local assessing officials to the State Board.

Section 125.

But this law does not require the State Board of Tax Commissioners to give to railway corporations, or their representatives, any HEARING *whatever,- either with or without notice,—touching any intended or proposed increase or change in the lists, assessments and valuations of their "railroad track" and "rolling stock" made out, scheduled and returned by such railway corporations under oath.*

Sections 85, 87, 129, 137.

Why this discrimination against railway corporations? Why this unequal protection, or, rather utter lack of protection, against the arbitrary, unequal, discriminating and oppressive taxation of "railroad track" and "rolling stock"?

Railway corporations are required by this law to list, assess and value, for taxation, their "railroad track" and "rolling stock," and return their assessments and valuations thereof to the Auditor of State *under the oaths of the proper officers of said corporations.*

Sections 85, 87.

These returns of the assessments and valuations of "railroad track" and "rolling stock" are made upon blanks furnished the railway companies by the Auditor of State. They are required to be so made and returned under heavy penalty. Section 86.

Why are not these *sworn assessments and valuations of "railroad track" and "rolling stock,"* made and returned by railway corporations, entitled to the same consideration, and provided with the same, or like, protections and safeguards, carefully given to, and provided for, the *sworn assessments and valuations* of their property made and returned by the owners, or representatives, of all other property subject to taxation?

The law requires *notice and a hearing* to be given to the owners of all other property *before any increase can be made in their sworn lists and valuations; and requires that they shall be advised, before the hearing, of the amount or character of the intended or threatened increase*, and be given an opportunity to defend against such increase with knowledge of what it is to consist.

This law *requires* no such *notice* to be given to railway companies. It does not *require* any *hearing* whatever to be given to them. It gives no consideration or protection to their sworn assessments and valuations of their "railroad track" and "rolling stock"; but gives to the State Board of Tax Commissioners full power to double, treble or quadruple their sworn assessments and

valuations, without any notice to them, without any hearing given them, and without any evidence proving, or tending to prove, their valuations incorrect.

Is such a law fair? Is it just? Does it treat all taxpayers alike? Does it provide "*due process of law?*" Does it afford the "*equal protection of the laws?*"

UNDER THIS LAW THE STATE BOARD DENIED, AND RENDERED IMPOSSIBLE, ANY HEARING FOR THE CORRECTION OF ERRORS AND OVERVALUATIONS,—AS TO "RAILROAD TRACK" AND "ROLLING STOCK."

Due notice, and a full hearing, are of no value to a person liable to be injured by the decision of a tribunal, *unless that person has knowledge of the charge made against him before the hearing.* To grant a hearing and at the same time deprive the accused of all knowledge of the charge against him, is a mockery of justice, and a travesty upon constitutional protection of person and property.

It will be claimed, by defendants in error, that the fact that this law fixes the time and place of the meeting of the State Board of Tax Commissioners makes it comply with all constitutional requirements; that no other notice is necessary; and that the right to a hearing *is implied.* If that is true why are notice and hearing in *every case*, excepting the assessment and valuation of "railroad track" and "rolling stock," so carefully, expressly and repeatedly reserved and provided by this same law? But this claim is utterly untenable, because:

This law makes it possible for the State Board of Tax Commissioners to deny to railway corporations,—as to the assessment and valuation of their "railroad track" and "rolling stock"—any hearing; and to render any hearing utterly impossible AFTER *said State Board has agreed upon*

its proposed and intended assessments and valuations of "railroad track" and "rolling stock;"—AND EXACTLY THAT COURSE WAS PURSUED BY SAID STATE BOARD IN ITS ASSESSMENTS AND VALUATIONS OF "RAILROAD TRACK" AND "ROLLING STOCK" AT ITS SESSION IN 1891.

No hearing for the correction of errors, or reduction of unequal and grossly exorbitant valuations, was granted. Any such hearing was rendered impossible by the action of the State Board under, and permitted by, this alleged law.

By this law the session of the State Board of Tax Commissioners is expressly limited to FORTY DAYS.

Section 132.

In 1891 the State Board convened and organized on August 3, 1891. Hence its session expired by limitation on September 11, 1891, and it did finally adjourn on that day.

Record P. C. C. & St. L. Ry. Co. Case, pp. 106, 110, 111.

Record I. & V. R. R. Co. Case, pp. 47, 50, 51.

In 1891, there were *seventy-eight* railway corporations subject to taxation in Indiana, aggregating in value many hundred millions of dollars.

The State Board of Tax Commissioners did not make, or agree upon, any assessments and valuations of "railroad track" and "rolling stock" until September 8, 1891, only *three days* prior to its final adjournment. On September 8th, it made its alleged assessments and valuations of the seventy-eight "railroads and parts of roads," and handed over its memoranda and computations to its clerk, for transcription into its record within the three remaining days of its session. But, during that three days, it gave no knowledge or infor-

mation to any railway corporation touching the assessments and valuations of "railroad track" and "rolling stock" made by it; nor did it give any possible opportunity for any hearing for the correction of errors and overvaluations.

Record P. C. C. & St. L. Ry. Co. Case, pp. 107, 144, 145, 151, 152.

Record I. & V. R. R. Co. Case, pp. 48, 111, 112, 122, 123.

It is, therefore, plain, to the point of absolute demonstration, that the State Board of Tax Commissioners did deny to these plaintiffs in error, and all other railway corporations, any hearing whatever after the assessments and valuations were made by said State Board; and rendered any hearing for the correction of errors, and exorbitant valuations, in said assessments and valuations utterly impossible.

This is the actual *condition* before this Court for consideration. Can it be offset by the *theory* that the law *implies the right to be heard?*

The fact that a State law *may* be so administered as not to deprive persons of rights guaranteed to them by the constitution of the United States is not enough; the law must contain such provisions that it MUST be so administered as not to deprive any person or corporation of any right guaranteed by the United States constitution.

Authorities in support of this statement will be cited in the argument following this general statement of these cases and analysis of the law the validity of which is involved.

If the session of the State Board of Tax Commissioners was *unlimited* as to duration; if it was required

by the law to remain in session throughout the year, or until long after its assessments and valuations were required to be officially published and made known; and if it was required to sit with open doors,—as is the case in some States,—there might be some force to the theory that the right to a hearing is given *by implication*. But this law reserves no such right, because, under its provisions and limitations, the State Board can, *and did*, arbitrarily deprive these plaintiffs in error, and all other railway corporations, of any hearing for the correction of errors and overvaluations, and rendered any such hearing utterly impossible.

This Law Requires Classification of Property for Taxation.

Sections 77 to 87 and 137 of this law, when compared with all the other provisions of the law, prove beyond question that the property of railway corporations is *classified* for the purpose of taxation; and that "railroad track" and "rolling stock" are subjected to *different and discriminating methods, rules and measures of valuation* from those applied to all other property subject to *ad valorem* taxation. It is certain that under this classification "railroad track" and "rolling stock" may have imposed upon them an *unequal* and unjust share of the public burden, as compared with all other property. These plaintiffs in error claim that such inequality and injustice are required by, and have resulted under, this law.

In States in which the constitution expressly *permits* the classification of property for taxation,—as is the case in Illinois; and in States in which the constitution does not *prohibit* the enactment of *special laws* for

the assessment and collection of taxes,—as was the case in Kentucky; this objection would lack force. But the constitution of Indiana prohibits "special laws" for the assessment and collection of taxes, and requires a "uniform and equal rate of assessment and taxation," under "such regulations as shall secure a just valuation for taxation of all property, both real and personal."

The sections of this law last above cited show clearly, not only *classification* in its most objectionable form, but also that it is the purpose and intent of the law to apply to "railroad track" and "rolling stock" methods, measurements and elements of valuation not applied in fixing the value of any other property. This is accomplished by arbitrarily imputing to "railroad track,"—in addition to its true cash value,—*the value of its owner's business, the value of its owner's corporate franchises,* although granted by States other than Indiana, *and the value of its owner's properties, facilities and rights,* situated in other States and duly taxed in such other States.

These records show conclusively that the alleged assessments and valuations here complained of include these putative and fictitious elements of taxable value.

TAXATION IN INDIANA OF PROPERTY SITUATED IN OTHER STATES, AND DULY TAXED IN SUCH OTHER STATES, IS PERMITTED AND REQUIRED BY THIS LAW.

By Sections 80, 83 and 85, the P. C. C. & St. L. Ry. Co. is required to schedule and submit to taxation in Indiana a very large amount of "rolling stock" never used or operated in Indiana, or in connection with, or on account of, its business carried on upon its lines of railway in Indiana,—all of which "rolling stock" is fully taxed in the States in which it is wholly and solely used and operated. That the P. C. C. & St. L. Ry. Co.

owned and operated such exclusively local equipments in Illinois, Ohio and Pennsylvania; that these local equipments were of great value; and that they were fully taxed in the respective States in which they were solely operated, cannot be denied. It is so averred in the *sworn* bill of complaint, and is not denied or questioned by any testimony. It is also averred in the complaint, and proved by the testimony, that the P. C. C. & St. L. Ry. Co. owned and operated urban and suburban lines and freight and passenger stations, in Illinois and Pennsylvania; and owned and operated local ore, coal and mineral lines in Ohio,—for all of which an equipment of "rolling stock" was certainly indispensable. It is also true that when J. T. Brooks, Vice-President of the P. C. C. & St. L. Ry. Co., was asked to state the true cash value of these local equipments in the three States, these defendants in error objected and the Court refused to permit the witness to answer. There is, in our opinion, no tenable ground for the rejection of this testimony. It was proper and lawful to charge in the bill that the plaintiff owned and operated such local equipments, separate and distinct from the equipment of its main interstate line of railway, and that, under this law, a large part of these special local equipments had been assessed and valued for taxation in Indiana, although already once fully taxed by these other States. If it was proper and lawful to make these charges in the bill, it was proper and lawful to prove them by the testimony of Mr. Brooks, in addition to the testimony furnished by the sworn bill of complaint. But notwithstanding this strange ruling of the trial Court there is sufficient proof in the record to substantiate the above statements.

The offered evidence would have shown these local equipments to be worth in cash $1,500,000.00.

Record P. C. C. & St. L. Ry. Co. Case, pp. 12, 141, 142, 143.

There cannot be a particle of doubt but that a large part of the "rolling stock" constituting these special and distinct local equipments, *is required by this law to be apportioned to Indiana, and is*,—in the alleged assessment and valuation for taxation of the "rolling stock" of the P. C. C. & St. L. Ry. Co.,—*assessed and valued for taxation in Indiana.* If that is not the attempted taxation in Indiana, of property outside of Indiana, not subject to taxation in Indiana, and already once taxed in other States, what is it?

Even if it could be held lawful and constitutional for Indiana, for the purpose of taxation, to *apportion to itself* the "rolling stock" of an interstate line of railway upon the *mileage basis*,—which we deny,—still such apportionment could only be applied to the "rolling stock" of the *main interstate line.* It could not apply to the equipment of special, separate, *local lines* in other States, and fully taxed in such other States. But it never can be lawful and constitutional for any State to apportion to itself, for taxation, the equipment of an interstate line of railway, upon the *mileage basis;* because any such apportionment inevitably results,—just as it has resulted in the case of the P. C. C. & St. L. Ry. Co., —*in fictitious and imported values for taxation* in those States, crossed by the interstate railway, in which *the least business is done* by the interstate railway company, and *in double taxation of the property represented by the fictitious and imported values.*

Each State has the right to tax all property, real

and personal, *within its boundary lines*, and *no other property.*

An interstate line of railway extending through Pennsylvania, West Virginia, Ohio, Indiana and Illinois may own, need and use *twice as much "rolling stock"* for the business of its main lines in Pennsylvania and Ohio, as it needs or uses for the business of its main lines in Indiana. All of its equipment needed and used in Pennsylvania and Ohio is fully taxed in those States, respectively; hence any part or portion of that equipment assigned or apportioned to Indiana for taxation *is taxed a second time.* The amount of equipment needed and used by an interstate railway company in any one State crossed or entered by its railway, is not measured by *mileage* but by *business.* The *mileage* of the P. C. C. & St. L. Ry. Co. in the three States of Pennsylvania, Ohio and West Virginia is one hundred and seventy-seven miles *less* in the aggregate than its *mileage* in Indiana, but its *business* in the three States is far more than *twice as much* as its entire business in Indiana. It, therefore, needs and uses more than twice the amount of "rolling stock" in those three States, that it needs and uses in Indiana. The "rolling stock" it needs and uses in Pennsylvania, Ohio and West Virginia is duly and fully taxed in those States. Can it be lawful and constitutional *to import into Indiana for taxation, and arbitrarily subject to a second taxation, the value of more than one-half of all the rolling stock needed and used in, and already once taxed by, those three States?* Just that is what is *required* by this alleged law. And just that is done in and by the alleged assessments and valuations here complained of.

BY THIS LAW THE LESSEE OF LEASED "ROLLING STOCK" IS REQUIRED TO PAY TAXES ON THE HIRED EQUIPMENT, NOT-

WITHSTANDING THE FACT THAT IT HAS ALREADY BEEN FULLY TAXED IN THE NAME OF ITS OWNER.

Section 83 of the taxing law of March 6, 1891, contains this strange and inequitable requirement.

It is evident that this requirement results in the *double taxation* of leased "rolling stock," and the burden of this double taxation falls upon the railway corporation leasing the equipment. An illustration will make this plain. Suppose that on January 1, 1891, the P. C. C. & St. L. Ry. Co. had found that it needed 2000 additional freight cars to enable it to transport to the seaboard all the freights and farm products offered for transportation. In order to meet this need it hired 2000 cars from the United States Rolling Stock Company of Illinois, for three months. The Rolling Stock Company is taxed upon all of these cars in Illinois, as the owner of the cars. When it leased the cars, it charged the P. C. C. & St. L. Ry. Co. rent at such rate as would insure it a fair income on its investment in the cars, *in addition to the taxes it was required to pay on those cars.* In other words the rent was increased by reason of the fact that the Rolling Stock Company was taxed on the cars. The cash value of the 2000 cars was $1,000,000.00.

Under this law the P. C. C. & St. L. Ry. Co.—after paying rent which was made to include taxes on the cars in Illinois,—*is required to be taxed in Indiana just as though it owned one-fourth*—$250,000.00—*of the 2000 cars.*

Is such a requirement just, valid, constitutional?

All that has been said regarding the *second taxation* in Indiana,—under the requirements of this law,—of a large part of the "rolling stock" of the P. C. C. & St. L. Ry. Co., never used or needed in Indiana, nor in connection with the business of said railway company

done upon its lines in Indiana, and *once fully and lawfully taxed in other States*, may also be applied *to the taxation in Indiana* of a large part of the value of terminals, terminal facilities, and "railroad track" owned and operated by the P. C. C. & St. L. Ry. Co., in Illinois, Ohio and Pennsylvania, and *once duly taxed in said States.*

There is no room for honest or reasonable doubt but that the assessments and valuations of the "*railroads*" of these plaintiffs in error, as made and certified by the State Board of Tax Commissioners in 1891, *do contain large increments of value imputed and arbitrarily assigned to said "railroads,"* IN INDIANA, *by reason of the fact that the P. C. C. & St. L. Ry. Co., and the Pennsylvania Company own exceptionally good and commodious terminals, terminal facilities, yards, elevators, freight and passenger stations, urban and suburban lines, and special coal, ore and mineral roads, of vast value, situated in Illinois, Ohio and Pennsylvania.*

It would be idle and absurd to attempt, in the face of these records, to deny that this is true.

The estimated value of the *entire line* of railway of the P. C. C. & St. L. Ry. Co., and the Pennsylvania Company—both within and *without* Indiana, has been *averaged* on the *mileage basis.* Many thousands of dollars in these valuations have been added to each mile in Indiana, by fictitiously imputing,—by means of such averaging of taxable values *outside* of Indiana with taxable values *within* Indiana,—to each mile in Indiana *value that it does not possess*, value that is not "ITS TRUE CASH VALUE."

But all of these vastly valuable properties *outside* of Indiana, are duly and fully taxed in the States of Illinois, Ohio and Pennsylvania, in which they are, re-

spectively, situated. Hence every dollar of this *imported valuation* arbitrarily assessed to the railways of these plaintiffs, situated in Indiana, *is taxed twice.*

The alleged assessment and valuation for taxation of the P. C. C. & St. L. Ry., in Indiana, is $35,014.00 per mile.

Record P. C. C. & St. L. Ry. Co. Case, p. 109.

It is averred in the complaint, and is proved by the testimony that the P. C. C. & St. L. Ry. Co. does not own any costly or unusually valuable "railroad track" or terminal property, improvements and facilities in Indiana; and that portions of its "railroad track," outside of Indiana, are worth, at the true cash value thereof, *five times* as much per mile as any portions of equal length in Indiana are worth.

Record P. C. C. & St. L. Ry. Co. Case, pp. 10 to 13; 147; and 138 to 143.

From this testimony, all of which stands uncontradicted and unquestioned, it is perfectly evident that $35,014.00 per mile *is more than double the true cash value* of the "railroad track" and "rolling stock" of the P. C. C. & St. L. Ry. within the State of Indiana. It is undoubtedly true that there is no *single mile* of this railway, with its equipment, in Indiana, that is worth anywhere near the $35,014.00 at which each mile in Indiana is assessed for taxation.

The Indianapolis and Vincennes Railroad is a local road. It never has earned enough to pay its operating expenses and bond interest. It now owes $2,284,083.22 of accumulated annual deficits in bond interest, paid and advanced for it by the Pennsylvania Company.

Its entire average earnings per mile, after payment of operating expenses, for the year preceding

April 1, 1891, were *only $501.05;* and yet this property is assessed for taxation at *$21,011.00 per mile.*

For the purpose of proving conclusively that the State Board did not assess the "railroad track" and "rolling stock" of this local road at *its* true cash value, but did impute and assign to it false and imaginary value, by adding to its true value a portion of the value of the property and franchises of the Pennsylvania Company, and the P. C. C. & St. L. Ry. Co. owned and taxed *outside* of Indiana; the I. & V. R. R. Co. offered to prove that its entire railroad, including right of way and improvements thereon, and all of its equipment and rolling stock, could be procured, built and paid for at not exceeding $13,000.00 per mile.

It also offered to prove—for the same purpose—that other lines of railroad wholly within Indiana, making large net earnings over and above all operating expenses and fixed charges,—some of them as much as $2,500.00 and $3,000.00 net earnings per mile,—were only assessed and valued for taxation at $2,000.00 or $3,000.00 per mile more than the I. & V. R. R. All of which offered testimony was rejected by the Court. Why it was rejected has never yet been discovered. It was in direct proof of express averments of the complaint. The record supports the above statements touching the I. & V. R. R. and its assessment for taxation.

Record I. & V. R. R. Co. Case, pp. 6 to 9; 49; 55; 115; 117; 120, and 59 to 105.

But, notwithstanding the rejection of this competent and relevant testimony, the record contains testimony sufficient to demonstrate the fact that the State Board did *not* assess the "railroad track" and "rolling stock" of the I. & V. R. R. Co. at its true cash value, as the property of said local company; *but did assess*

and value for taxation the "railroad" of the I. & V. R. R. Co., PLUS *a portion of the value of the properties and franchises of the Pennsylvania Company and the P. C. C. & St. L. Ry. Co., owned and taxed outside of Indiana.*

This is not taxation of the "railroad track" and "rolling stock" of the I. & V. R. R. Co.; *it is taxation of the business character and "good will," the earning power, the instruments and facilities, and the corporate franchises of the Pennsylvania Company, and the P. C. C. & St. L. Ry. Co., as interstate corporations, engaged in the transportation of interstate commerce; by arbitrarily imputing and tacking their value to the "railroad track" of the I. & V. R. R. Co.*

A dozen railroads entering Indianapolis have precisely the same *physical connection* with the tracks of the P. C. C. & St. L. Ry., that the I. & V. R. R. has, viz: the tracks of the Union Railway Company.

Hon. Claude Matthews testified: "Had the plaintiff's road been entirely *disconnected* from the Pennsylvania Company and the P. C. C. & St. L. Ry. Company *the assessment would not have been placed as high as it was.*" * * * "The *value* of the railroad track and rolling stock of plaintiff, independent of the *connection* named in the question, *was not assessed or considered.*" Record I. & V. R. R. Co. Case, pp. 123, 124.

What *connection* is here referred to? Certainly not *physical connection*, because all roads entering Indianapolis are on an equality in that respect,—all physical connections are over, and by means of, the tracks of the Union Railway Company.

What other *connection* could the witness, and the other members of the State Board, have had in mind when they assessed the "*road*" of the I. & V. R. R.

Co. *higher* on account of its *connection* with the Pennsylvania Company and the P. C. C. & St. L. Ry. Co.?

The answer is plain,—*business connection.* No one can doubt that. The State Board intended to assess for taxation, and *did value and assess* for taxation the *business ability*, the *earning capacity*, the *instruments, properties, facilities* and *franchises* of the Pennsylvania Company and the P. C. C. & St. L. Ry. Co., *as interstate corporations owning foreign properties and franchises and possessing large ability and earning capacity.* In order to accomplish this unlawful and unconstitutional taxation the State Board *tacked these foreign values* to the railroad of the I. & V. R. R. Co., and assessed it at *$21,011.00 per mile*,—more than three times its true cash value.

Can a law which permits, sanctions, or renders possible such assessments and valuations for taxation be held valid and constitutional?

UNDER PERMISSION AND SANCTION OF THIS ALLEGED LAW, THE STATE BOARD OF TAX COMMISSIONERS HAS ASSESSED AND VALUED FOR TAXATION IN INDIANA, THE BUSINESS, BUSINESS CAPACITY, INSTRUMENTS, PROPERTIES, FACILITIES, CORPORATE FRANCHISES AND EARNINGS OF THE P. C. C. & ST. L. RY. CO. OWNED, USED AND POSSESSED BY IT IN STATES OTHER THAN INDIANA, AS AN INTERSTATE CORPORATION ENGAGED IN THE TRANSPORTATION OF INTERSTATE COMMERCE; IN ADDITION TO THE ASSESSMENT AND VALUATION OF ITS "RAILROAD TRACK" AND "ROLLING STOCK" LAWFULLY AND CONSTITUTIONALLY SUBJECT TO TAXATION IN INDIANA.

If this statement is correct it is plain that this law cannot stand; because such an assessment and valuation for taxation takes the property of the P. C. C. & St. L. Ry. Co. without *due process of law;* denies it the *equal protection of the laws;* taxes its property *outside of Indiana;* subjects a large part of its property to *double*

taxation; and imposes taxes upon the *instruments, properties, facilities, and franchises owned and used by it in other States in interstate commerce, and thereby taxes its earnings earned in the business of interstate commerce.*

That this statement is true is proved by Sections 85, 83 and 80 of this law; considered in connection with *Schedules 4 and 2* required by the State Board of Tax Commissioners, and the *certificate* of said State Board appended to its alleged assessment and valuation of "railroads and parts of roads."

Record P. C. C. & St. L. Ry. Co. Case, pp. 115, 114 and 110.

The supreme purpose of these sections of the law, and of these schedules required under these sections, is to enable the State Board to *measure the value of interstate railways*, for taxation, by their *business* and *earnings outside of Indiana*, and by their *properties, instruments, facilities and earning capacities outside of Indiana*, rather than to assess and value their property *in Indiana*, by applying to it the *same methods, considerations and measurements*, applied to all other property subject to taxation.

That this alleged law was so administered in making the assessments and valuations of the property of these plaintiffs in error, is proved beyond question by the testimony of Hon. Claude Matthews in the case of the I. & V. R. R. Co. already twice referred to and quoted, *supra*, pp. 14, 15 and 63.

This testimony shows unmistakably the use made of these schedules, and that they were used to assess and value, for taxation, the *business, earning capacity* and *business reputation* of the P. C. C. & St. L. Ry. Co., and the Pennsylvania Co., instead of the "railroad track" and "rolling stock" of these plaintiffs in error *situated in Indiana.*

It is one thing to assess and value *property*, for taxation, by considering *its* relative advantages or disadvantages attaching to *it, at its situs.* It is a very different thing to *add* to this property value the *supposed value* of the *business, thrift, ability, capacity* and *earning power* of the person or corporation *using that property* in carrying on his or its business. The *first* is the taxation of *property;* the *second* is the taxation of the *business, earning ability,* and *earnings,* of the *occupant* of the property.

This alleged law *permits,* and, in effect, *requires* "railroad track" and "rolling stock" to be subjected to this *second method* of assessment and valuation for taxation; no other property is subjected to this *second rule of assessment,* all other property is assessed under the *first rule* above stated.

The taxable value of a mill, a factory, a manufacturing plant, a storehouse, or a farm, depends quite largely upon its *location* and *surroundings,*—including all the various advantages or disadvantages covered by those terms. But can it be held valid and constitutional taxation, to add large increments of valuation, for the purpose of taxation, to either of these pieces of property on account of the fact that the owner, or occupant, possesses superior business ability, and has large capital, valuable business connections and facilities in other States, and owns, or operates, similar properties and plants in other States?

The bare statement of the proposition shows its enormity, its gross injustice, and its unconstitutionality.

Suppose two corporations exist, named, respectively, A. and B.: A. owns and operates a mill, manufacturing plant, or factory, on one side of a street in Indianapolis; B. owns and operates a like mill, manufacturing

plant, or factory, on the opposite side of the street; the location and surroundings are practically the same; the grounds are of equal extent and convenience; the buildings, instruments and machinery, are of equal size, character, amount and quality. In a word, they are precisely alike and equal in *property value*, and in *adaptation for use.*

Every one knows that, under any just and constitutional system of taxation, the property of A. and B. ought to be assessed and valued for taxation at the *same amount.*

Suppose, further, that A. possesses superior business ability, energy and thrift; while B. possesses only ordinary business ability, and lacks the push and enterprise of A.; that A. has acquired valuable business acquaintances and connections in other States, and owns and operates, in other States, larger plants and properties of like kind with its Indianapolis plant and property, thus greatly enlarging the volume of its business, and increasing its earning capacity; while B. owns and operates only its Indianapolis plant and property, and rests content with the local market for its products.

Can it be justly or constitutionally held that, by reason of the facts mentioned, the *Indianapolis plant and property* of A. should be assessed and valued for taxation at a *larger valuation* than the *Indianapolis plant and property* of B.?

The answer must be an emphatic No!

It cannot be denied that *every dollar* of increased valuation of the property of A., over and above the valuation of the property of B., in the supposed case, would be to subject to taxation, *in Indiana*,—to the extent of the increase,—the value of the business, business

ability, earning capacity, earnings, and property of A., *not represented by its property in Indiana*, but represented by its *personal qualities and characteristics*, and by its property in other States, already once taxed in such other States.

The application is easy. Just this unjust and unconstitutional method of assessment and valuation for taxation has been applied to the property of these plaintiffs in error. This is in effect, admitted; and is clearly proved by the records. The State Board did not assess and value the "railroad track" and "rolling stock" of the P. C. C. & St. L. Ry. Co., and the I. & V. R. R. Co., *situated in Indiana;* but, instead, assessed and valued for taxation, *in Indiana*, the estimated value of the *personal qualities and attributes; the business ability; the earning facilities and capacities; the foreign franchises*, and *the foreign instruments, appliances and properties* of two great *interstate corporations*, namely: the P. C. C. & St. L. Ry. Co., and the Pennsylvania Company.

By this unlawful and unjust means the State Board swelled the assessment of the portion of the railway of the P. C. C. & St. L. Ry. Co., situated in Indiana, from $8,538,053.00,—its true cash value as proved in the record, and the amount at which it was assessed in 1890,—*up to the sum of $22,666,470.00 in 1891;* and increased the assessment of the property of the bankrupt I. & V. R. R. Co., from $811,230.00,—its full cash value as proved in the record, and the amount at which it was assessed in 1890,—*up to the sum of $2,684,491.00 in 1891.*

If these same methods of *double taxation*, and *fictitious valuation* for the purpose of taxation, were resorted to by every State in which these interstate corporations

own and operate lines of railway, and were upheld by the Courts, these corporations would be obliged to either very materially increase their transportation tariffs, or "go to the wall."

It should be remembered in this connection that charters of railway corporations, granted by Indiana, neither grant, nor are permitted to create, *monopolies*. Our laws give full right for the incorporation of new companies to build new lines parallel with, and as near to existing lines as the new companies may desire; while we prohibit the creation of any monopoly by the consolidation of parallel or competing lines of railway.

The vice and unconstitutionality of this alleged law consists largely, but not wholly, in that it permits, sanctions, and, semingly requires, different, distinct and separate methods, rules, principles, elements and measures of supposed value, to be applied to the assessment and valuation of "railroad track" and "rolling stock," from those applied to all other property subject to *ad valorem* taxation. These different rules, elements, and measures of value applied to railroad property and *omitted* in the valuation of all other property, must necessarily result in the *unequal* and *ununiform* valuation of railroad property, as compared with all other property.

Unequal and ununiform valuation, for taxation, inevitably results *in unequal*,—and consequently unjust and unconstitutional,—taxation.

It has so resulted in these cases at bar, hence these plaintiffs are here asking this Court to give them the protection guaranteed to them by the constitution of the United States.

Additional Discrimination against Railway Corporations.

Before closing this analysis of the law of March 6, 1891, and its application to the pretended assessments and valuations of the property of these plaintiffs, the attention of the Court is called to two additional discriminations against railway corporations, found in the alleged law, viz:

First. By Section 104, it is provided that *real estate* shall only be assessed and valued for taxation every *fourth year*. That is, one assessment shall stand as the assessment of real estate for four years, without change, unless there is a change in improvements thereon.

By Section 78 "railroad track" is defined, and is declared to be *real estate*, for the purpose of taxation. But by Sections 77, 78, and 85, the *real estate* of railway corporations denominated "railroad track," is subjected to a *new assessment and valuation* for taxation *each year*.

Second. By Sections 133, 134, 135 and 138, the State Board of Tax Commissioners is constituted a Board of Equalization. But in *equalizing* the assessments of *all* the property in the State, as listed and assessed in the different counties, the State Board is limited to the consideration of just two classes of property, namely: Real estate and "*railroad property.*" These words, "railroad property," are expressly made to include *railroad personal property and railroad real estate.* No other *personal property* can be considered in *raising the average assessment* in a county, excepting only *railroad personal property*,—that can be raised to fit and fill any lack in the average.

This pretended law seems to regard the property of railway corporations as beyond the pale of any pro-

tection, and as the legitimate prey and plunder of the tax gatherer.

Careful computations, made from the official public records of the State, show that the *increase* in the valuation for taxation of the entire property of the P. C. C. & St. L. Ry. Co. in Indiana, under this alleged law, in the year 1891, over the valuation of same property in 1890, was *one hundred and ninety-five per cent.;* while the *increase* in the valuation of *all other property*, real and personal, in the several counties through and into which the lines of the P. C. C. & St. L. Ry. extend, in 1891, over the valuation in 1890, was only an average of *forty-three per cent.*

The *increase* in the valuation of the entire property of the I. & V. R. R. Co. in 1891, over the valuation of the same property in 1890, was *one hundred and ninety-seven and one-half per cent.;* while the *increase* in the valuation of *all other property*, real and personal, in the several counties through and into which the I. & V. Railroad extends, in 1891, over the valuation in 1890, was only an average of *forty-six and six-tenths per cent.*

These enormous differences are not the result of actually existing differences in taxable value; they are the results of arbitrary, unlawful and unconstitutional powers vested in the State Board of Tax Commissioners by this pretended law.

The purpose of the foregoing statement and analysis has been to show,—from the law itself, and from the administration of the law as disclosed by the records in these causes,—that the provisions of the Act of March 6, 1891, providing for the assessment and valuation for taxation, of that portion of the property of railway corporations denominated, by this law, "railroad track"

and "rolling stock," are invalid, and in conflict with Section 1, Fourteenth Amendment, and Section 8, Article 1, of the constitution of the United States; and have worked gross wrong and injustice to these plaintiffs in error, because:

First. This law denies "*due process of law*" to these plaintiffs, respecting the assessment and valuation for taxation of their "railroad track" and "rolling stock," in that:

1. It does not require any *notice* to be given them of the assessments and valuations of their "railroad track" and "rolling stock," agreed upon and intended to be made by the State Board of Tax Commissioners, at any time *before* said assessments and valuations are made final and absolute, or at any time before the final adjournment of said State Board.

2. It does not require the State Board of Tax Commissioners, to grant to plaintiff any *hearing, or opportunity to be heard*,— for the correction of errors, or for the purpose of showing and proving that the assessments and valuations of their "railroad track," and "rolling stock," agreed upon and intended to be made by said State Board, are erroneous, excessive and unlawful, at any time *after* said assessments and valuations are agreed upon by said State Board, and *before* they are made final and absolute, or at any time before the final adjournment of said State Board.

3. It gives to the State Board of Tax Commissioners arbitrary power to *deny* to plaintiffs any *hearing*, at any time, and to render any *hearing*, for the correction of errors, and the reduction of excessive and unlawful assessments and valuations utterly impossible, —which was done in these cases.

Second. This law denies "*the equal protection of the laws*" to these plaintiffs,—touching the assessment and valuation, for taxation, of their "railroad track" and "rolling stock," in that:

1. It is a *special law*, separating, distinguishing and *classifying* the corporate property of railway corporations into separate and distinct *classes*, for the express purpose of permitting and requiring *discriminating, unequal and ununiform taxation* of "railroad track" and "rolling stock,"—as compared with the taxation of all other property.

2. It permits and, in effect, requires *different rules, methods* and *measures* of value, and the consideration of other and different *elements* of supposed value, to be applied in the valuation, for taxation, of "railroad track" and "rolling stock," from those applied in the valuation, for taxation, of all other property; this discrimination resulting in the valuation and taxation of "railroad track," and "rolling stock" *at an unequal, unjust and ununiform rate*, as compared with all other taxable property.

3. It requires the taxation, *in Indiana*, of a very large part of the "rolling stock" and equipment of the P. C. C. & St. L. Ry. Co., which is never used in Indiana, or in connection with the business done by said plaintiff over and upon its lines in Indiana; which is solely and exclusively used in States other than Indiana; and which is already fully taxed in such other States. It also requires all *leased* "rolling stock" to be assessed and taxed as the property of the *lessee railway company*, notwithstanding the fact that it has been once taxed as the property of its owner.

4. It permits and, in effect, requires the assessment

and taxation, *in Indiana*, of a large portion of the value of terminals, terminal facilities, yards, stations, special urban and suburban lines of railway, and other railway property, owned by the P. C. C. & St. L. Ry. Co., *situated in other States, and duly and lawfully taxed in such other States.*

5. It denies to plaintiffs,—as to the assessment and valuation, for taxation, of their "railroad track" and "rolling stock,"—the jurisdiction of the local assessing officers; and deprives plaintiffs,—as to their said property,—of the rights of appeal to county boards of review and from said county boards to the State Board of Tax Commissioners, whereby they would be assured a hearing, before the assessments of their property could be made final and absolute,—which jurisdiction and rights of appeal, are granted to the owners of all other property subject to taxation.

Third. This law permits and, in effect, requires the State Board of Tax Commissioners to assess and value for taxation, IN INDIANA, the *business, business capacity, instruments, properties, facilities, corporate franchises and earnings* of the P. C. C. & St. L. Ry. Co., owned, used and possessed by it *in States other than Indiana*, as an *interstate corporation*, engaged in the transportation of *interstate commerce;* in addition to the assessment and valuation of its "railroad track" and "rolling stock" lawfully and constitutionally subject to taxation in Indiana; and this has been done in the case of said plaintiff in error now at bar.

Under permission of this law the said State Board has also assessed and valued for taxation, *in Indiana*, the *franchises, business, facilities, reputation* and *earning capacity* of the Pennsylvania Company,—a foreign cor-

poration engaged in interstate traffic and transportation,—by *imputing* and *arbitrarily assigning* a portion of their estimated value to the "railroad" of the I. & V. R. R. Co.,—a local company whose corporate property is wholly within Indiana.

OPINION OF THE INDIANA SUPREME COURT.

The opinion of the Supreme Court of Indiana, in these cases, as announced by Olds, J., appears in the record in the case of the P. C. C. & St. L. Ry. Co.

Record, P. C. C. & St. L. Ry. Co. Case, pp. 173 to 193.

This opinion is notable alike for what it does contain, and for what it does not contain. It is long in words, but quite brief in reasoning and argument. Some of the most important points presented for decision seem to have received but little thought or consideration, and are decided without discussion; while points upon which there was but little, if any, dispute or conflict of opinion, are elaborated at length. With profound respect, and high regard for the highest Court of Indiana, it may be suggested that this opinion does not do justice to the gravity, and far-reaching effect, of the questions involved. The decision may possibly be right. If it is, the reasons given seem quite insufficient to afford it proper support.

Although not in express terms so stated, this opinion does, by inference, clearly hold that this law does DENY to these plaintiffs *due process of law*, and does DENY to them *the equal protection of the laws*, and is in conflict with the Fourteenth Amendment to the constitution of the United States,—*unless it does provide for, and give to plaintiffs a hearing, or an opportunity to be heard, touching the assessment and valuation of their "railroad track" and*

"*rolling stock*," AFTER *the State Board of Tax Commissioners has agreed upon its intended assessment and valuation of said "railroad track" and "rolling stock," and* BEFORE *its said intended assessment and valuation is made final and absolute.*

This is an important holding, and is clearly right.

This opinion further, by inference, holds that *before* such hearing, or opportunity to be heard, *plaintiffs must have knowledge of the amount at which the State Board of Tax Commissioners intends, and has agreed, to assess and value their "railroad track" and "rolling stock" for taxation.* This holding also is clearly right. It would be a travesty upon justice and constitutional protection to give plaintiffs a hearing, or opportunity to be heard, and at the same time *deprive them of all knowledge of the character and amount of the charge against their property.*

Then comes an amazing, and,—in the light of the unquestioned and clearly proved facts in the records,—incomprehensible holding, to the effect that this law *does* provide, give and secure to plaintiffs just such hearing, or opportunity to be heard, as above described; and that *these plaintiffs did, in these cases, have such an opportunity to be heard.* This holding is utterly untenable. It is flatly contradicted by the facts in the records, admitted and proved beyond possible controversy. The State Board of Tax Commissioners not only did *not* give to plaintiffs any such *opportunity to be heard* AFTER the assessment and valuation of their property had been fixed and agreed upon by said State Board; *but it rendered any such hearing utterly impossible*, by delaying the assessment and valuation of *all* of the *seventy-eight* railroads subject to taxation *until September 8, 1891*, while the session of the State Board expired, by limitation of

law, *on September 11, 1891.* This whole matter has been already considered, and the facts in the record have been carefully stated, in the analysis of this law. *Supra*, pp. 48 to 53. It seems to have entirely escaped the learned judge that a law, under the provisions of which the State Board of Tax Commissioners *can* arbitrarily deprive, *and has arbitrarily deprived*, these plaintiffs of any hearing, or opportunity to be heard, for the correction of errors and the reduction of overvaluations, *after* the assessment and valuation of their property had been agreed upon by said State Board, and *before* said assessment and valuation was made final and absolute,—is just as unconstitutional as it would be if in express terms it provided that no such hearing, or opportunity to be heard, should be given.

The right to such a hearing, is not, and cannot be made, a matter of *grace, favor* or *discretion;* it is a *constitutional right.* This high right, guaranteed by the United States constitution, cannot be left to be enforced, or *denied,* at the caprice and pleasure of the State Board of Tax Commissioners.

The only reason given in the support of this strange holding is that Section 129 of the law contains the following words: "The State Board of Tax Commissioners is hereby given all the *powers* given to county boards of review." Under these words, which are repeated over and over again in the opinion, it is claimed that the constitutional right to a *hearing*, for the correction of errors in assessments fixed and agreed upon by the State Board, *is assured and given to these plaintiffs.* We are not informed by the opinion how any such grant or assurance flows from these words. The fact is, these words neither give nor assure any right whatever *to these plaintiffs.*

The learned judge seems to have forgotten the potent fact that there is a wide difference between *powers* and *duties*. It is one thing to *confer a power* upon the State Board of Tax Commissioners. It is a very different thing to *enjoin a duty* upon the State Board of Tax Commissioners. The writer of this opinion confounds the two and treats *powers* and *duties* as synonymous terms.

A glance at Section 129, will satisfy this Court that these words, so much relied upon in the opinion, have reference, wholly, to the *inquisitorial powers* given to county boards of review, to aid them in searching out and subjecting to taxation omitted property, or property not assessed at its proper value. They can mean nothing else. These words do not *require the performance of any duty* by the State Board. They give *it* certain *powers*. They *require nothing*. They give *no power or right* whatever to *these plaintiffs*.

Neither Section 129, nor any other section of this law, *requires the State Board to perform the duties expressly and repeatedly enjoined upon county boards of review, and other local assessing officials, touching notice and hearing required to be given to all taxpayers*,—excepting railway corporations,—*before any change can be made in the lists and assessments as made by the taxpayer*.

The fact that the State Board of Tax Commissioners *possessed power to grant to these plaintiffs a hearing*, both *before* and *after* it had agreed upon its intended assessment of their property, as a matter of *grace* or *favor*,—a fact that no one has ever disputed,—DOES NOT MEET THE CONSTITUTIONAL REQUIREMENT. The question is not whether the State Board has power under this law to give railway corporations such a hearing as the constitu-

tional guaranty requires. But the question is: Does this law give to railway corporations the right to demand and receive such a hearing? does the law *compel* and *require* the State Board to give to railway corporations such a hearing?

There can be but one answer to these questions.

This opinion proceeds on the theory that if the State Board possessed power to grant such a hearing, all constitutional requirements are complied with. That is, in our opinion, a fatal error. The opinion shows and admits the law to be in direct conflict with the United States constitution *unless the mere fact that the State Board has power to grant railway corporations such hearing, as a matter of grace and favor, makes it valid.*

It will be observed that this opinion does not claim that the right to a hearing, or an opportunity to be heard, with knowledge of the character and amount of the agreed and intended assessments fixed by the State Board, is given to these plaintiffs *by implication.*

The Indiana Court recognized that any such claim would be inconsistent and incongruous, in face of the fact that this law, in *six* different Sections,—Secs. 108, 113, 114, 125, 142, 182,—expressly *requires* that *notice* and *a hearing* SHALL BE GIVEN to every taxpayer in the State,—excepting the owners of "railroad track" and "rolling stock,"—*before* any addition of property, or increase of valuation, can be made in the sworn lists and valuations returned by the taxpayer. Railway corporations make out and return lists and valuations of their "railroad track" and "rolling stock" *under oath.* Each of these plaintiffs made out and returned its lists and valuations under the oaths of two of its chief officers. Why are they deprived of any hearing?

Why are their sworn lists and valuations *increased* nearly *two hundred per cent.* without giving them any opportunity to be heard in defense of their rights and their property?

The legislature of Indiana understood the difference between *giving powers* to the State Board, and *requiring it to perform duties.* In Section 125, the State Board is *required to give a hearing* to all taxpayers complaining,—excepting railway corporations.

The words are: "Appeals shall lie from the decision of any county board of review to the State Board of Tax Commissioners, *which* SHALL HEAR *and determine the same.*" These words refer to, and give, a hearing *after* some change has been made by the assessing officers in the sworn lists and valuations returned by the taxpayer.

A single sentence from the opinion will show how the Supreme Court of Indiana treats this vital point, this guaranteed right, when *these plaintiffs* invoke and urge it in defense of their property. Judge Olds says: "*They, through their written schedule and statement of values,* ARE HEARD BY THE BOARD." Is not this trifling with the constitutional rights of these plaintiffs?

All other taxpayers are heard by the assessing officers, "through their written schedule and statement of values," in precisely the same way, and to the same extent, that railway corporations are *heard* by the State Board through their sworn schedules and statements of value of their "railroad track" and "rolling stock."

By this sentence last quoted the Indiana Court virtually admits that the *only hearing,*—which is no hearing at all,—given by this law to railway corporations for the protection of their "railroad track" and "rolling

stock," consists of their written schedules and statements of value returned to the State Auditor several months before the State Board of Tax Commissioners meets; while by this same law all other taxpayers have given and secured to them *notice* and *full hearing* BEFORE any change can be made in their sworn lists of valuations. Is not this an express *denial* to railway corporations of the constitutional right freely given to all other taxpayers?

In this opinion the following remarkable statement appears:

"As to whether the portion of Section 129 which we have quoted gives to the State Board the right attempted to be conferred upon county boards by Section 114 in relation to *serving notice upon and changing or adding to the valuation of the property of individual taxpayers is a matter about which we are not here concerned, as that question is in no way involved in this case.*"

This is a startling and utterly incomprehensible statement. It shows conclusively that the learned judge writing the opinion has entirely omitted consideration of one of the chief and vital questions in these cases. The gist and kernel of one of the chief contentions of these plaintiffs is that this law is in conflict with the Fourteenth Amendment; *because it denies to these plaintiffs the equal protection of the laws, granted to all other taxpayers, and, therefore, takes the property of these plaintiffs without due process of law;* and yet the Indiana Court, in the quotation above set forth, deliberately states that this very question of *unequal protection* is in no way involved in these cases. The unequal protection complained of consists in *denying* to these plaintiffs notice, and an opportunity to be heard, for the correction of

errors in the assessments of their property; while the law expressly gives and secures to all other taxpayers notice, and an opportunity to be heard, *before* any change can be made in their assessment lists and valuations.

In discussing the question of *classification* of property for taxation, and the consequent *inequality* of assessment, the Indiana Court cites, quotes, and seems to chiefly rely upon, decisions, touching the question of classification of property, rendered under the constitution of Illinois. The learned judge seems to have forgotten that these authorities are not applicable to the cases at bar, because the constitution of Illinois expressly permits the classification of property for the purpose of taxation; while the constitution of Indiana contains no such permission, but on the contrary, requires that all taxation shall be based upon a "uniform and equal rate of assessment," levied equally upon a "just valuation for taxation of all property both real and personal," and also expressly prohibits the enactment of *special laws* for the assessment and collection of taxes.

In considering and passing upon the question of the assessment of the "rolling stock" of the P. C. C. & St. L. Ry. Co ,—*as an interstate corporation*,—upon the *mileage basis*, including all the mileage of "railroad track" owned by it *outside* of Indiana; thereby subjecting to taxation in Indiana large amounts and values of "rolling stock" never needed or used in Indiana, or in connection with the business of plaintiff done on its lines in Indiana; but used wholly and solely in other States, and fully taxed in such other States; and the question of arbitrarily imputing and assigning to the "railroad track" of the P. C. C. & St. L. Ry. Co. situ-

ated in Indiana, large increments of value fictitiously borrowed and drawn from immensely valuable "railroad track," terminals, facilities, properties and franchises owned by said plaintiff in other States; this opinion seems to proceed upon the following lines, namely:

1. That it is legal and equitable to *add values*,—for the purpose of taxation,—to the "railroad track," of the P. C. C. & St. L. Ry. Co. in Indiana, by reason of the fact that it is an interstate corporation, and owns vastly valuable lines of railway, terminals, connections, facilities, properties and franchises in other States,—regardless of the fact that all these properties are duly taxed in such other States.

2. That *each mile* of the "railroad track" of the P. C. C. & St. L. Ry. Co. *outside of Indiana*, is, *by presumption of law, worth no more* than each mile *within* Indiana; and that this same *presumption* holds good as to said plaintiff's "rolling stock."

3. That the P. C C. & St. L. Ry. Co. is an Indiana corporation,—as well as an interstate corporation,—and that, as an Indiana corporation, the *situs* of all of its *personal property*, whether *within* or *without* Indiana, *is in Indiana*, and is, therefore, taxable in Indiana.

Not one of these positions can be supported by either reason, equity or law. If the *first* position above stated were correct, it is plain that every interstate railway corporation could be choked into bankruptcy by the taxation of all of its expensive and valuable terminals, facilities, properties, connections, business and franchises, on its entire interstate line, *in every State into which its lines of railway extend*. If Indiana can fictitiously import, and tack on to the "railroad track" of the P. C. C. & St. L. Ry. Co. within her borders, the

value of millions of dollars worth of terminals, properties, and business rights, franchises and connections, belonging to that company, situated in Chicago and Pittsburgh,—Ohio and West Virginia can do the same.

There is no presumption of law that a mile of the "railroad track" of the P. C. C. & St. L. Ry. Co., situated in the heart of the city of Chicago, or in the business center of the city of Pittsburgh, is worth no more than a mile of the "railroad track" of that company in Indiana. Presumptions of law are supposed to bear close relationship to reason, common sense and equity; while this presumption surely cannot be held akin to either.

Neither is there any presumption of law that the P. C. C. & St. L. Ry. Co. needs and uses no more "rolling stock" on the average mile of its railway *outside* of Indiana, than it needs and uses on the average mile of its railway *within* Indiana; nor that it does no more business,—earns no more money,—on the average mile of its railway *outside* of Indiana than it does on the average mile of its railway *within* Indiana. Such presumptions find no support in reason or equity, and are flatly contradicted by the facts in the case of the P. C. C. & St. L. Ry. Co.

That no mistake has been made in the above statements of the theory upon which the opinion of the Supreme Court of Indiana is based, will readily appear by quotation of the following extracts from the opinion, namely:

"It is evident that no fair or equitable value could be placed on a railroad track by *severing it into parts extending* from one township or county line to another, or even *from one State line to another*, and estimating *only*

the portions lying within the borders of a single township, county or *State.* * * * The portion of a track crossing unreclaimed land of practically no value is as valuable as that portion which runs through a populous city, *in so far as its purpose and use is that of an interstate line.* * * * *Presumptively the line of railroad track and rolling stock is of no greater value per mile beyond the borders of the State than within the borders of the State.* * * * Section 80 declares that the movable property belonging to a railroad company shall be held to be personal property, and denominated personal property, while Section 3 provides that 'all property within the jurisdiction of this State not expressly exempted shall be subject to taxation.' Section 4 provides that for the purpose of taxation, * * * personal property shall include all goods and chattels within the State, all ships, boats, *whether at home or abroad*, and their appurtenances; all goods, chattels, and effects belonging to inhabitants of this State *situate without this State*, except the property actually and permanently invested in business within another State."

The evident purpose of the extract last quoted is to offer some sort of support for the taxation in Indiana of large amounts of the "rolling stock" of the P. C. C. & St. L. Ry. Co., never used or needed in Indiana, or in connection with the business of said company carried on over and upon its lines of railway within Indiana; on the ground that the *taxable situs* of that "rolling stock" is in Indiana because the P. C. C. & St. L. Ry. Co. is an Indiana corporation. The fallacy of this position is perfectly evident. If Indiana can tax all of the "rolling stock" of the P. C. C. & St. L Ry. Co., as an interstate corporation, because it is a corporation of

Indiana, every other State into or through which the line of the P. C. C. & St. L. Ry. Co. extends, can also subject to taxation all of its "rolling stock."

In view of the foregoing analysis of the opinion of the Supreme Court of Indiana, it is a pleasure to be enabled to add that the opinion of that Court is in no degree whatever binding upon this Court.

State Bank of Ohio v. *Knoop*, 16 How. (U. S.) 391, 392.

Ohio Life Insurance and Trust Co. v. *Debolt*, 16 How. (U. S.) 433.

Walker v. *State Harbor Commissioners*, 17 Wall. (U. S.) 651.

Norton v. *Shelby County*, 118 U. S., 439.

Gormely v. *Clark*, 134 U. S., 348.

Stutsman County v. *Wallace*, 142 U. S., 306.

McPherson v. *Blacker*, 146 U. S., 22.

PROPOSITIONS AND AUTHORITIES.

I.

THE ACT OF MARCH 6, 1891, DENIES DUE PROCESS OF LAW TO THESE PLAINTIFFS, RESPECTING THE ASSESSMENT AND VALUATION, FOR TAXATION, OF THEIR "RAILROAD TRACK" AND "ROLLING STOCK," IN THAT:

1. *It does not require any* NOTICE *to be given to them of the assessments and valuations of their "railroad track" and "rolling stock," agreed upon, and intended to be made, by the State Board of Tax Commissioners, at any time* BEFORE *said assessments and valuations are made final and absolute, or at any time before the final adjournment of said State Board.*

2. *It does not require the State Board of Tax Commissioners to grant to plaintiffs any* HEARING *or* OPPORTU-

NITY TO BE HEARD,—*for the correction of errors, or for the purpose of showing and proving that the assessments and valuations of their "railroad track" and "rolling stock," agreed upon, and intended to be made by said State Board, are erroneous, excessive and unlawful,—at any time* AFTER *said assessments and valuations are agreed upon by said State Board, and* BEFORE *they are made final and absolute, or at any time before the final adjournment of said State Board.*

3. *It gives to the State Board of Tax Commissioners arbitrary power to* DENY *to plaintiffs any* HEARING, *at any time; and to render any* HEARING, *for the correction of errors, and the reduction of excessive and unlawful assessments and valuations,* UTTERLY IMPOSSIBLE,—*which was done in these cases.*

The constitution of the United States provides:

"Nor shall any State deprive any person of life, liberty, or property, *without due process of law.*"

Fourteenth Amendment, Sec. 1.

The constitution of the State of Indiana provides:

"Every man, for injury done to him in his person, *property*, or reputation, *shall have remedy by due course of law.*" Art. 1, Sec. 12.

What is the exact meaning of the phrase "due process of law?"

This phrase appears in the constitution of the United States, and,—either in these exact words or their equivalents,—in the constitution of every State in the Union; yet no definition is given of what is required to constitute "due process of law." In a broad and comprehensive sense it may be said to be a restatement of the chief guaranty granted by *Magna Charta.* In Reeves' History of the English Law, the author, speaking of Chapter 29 of Magna Charta, says:

"Of all the provisions made by this Charter for the security of the person and property of the subject, none has so much engaged the attention and claimed the reverence of posterity as chap. 29, which contains a very plain and explicit declaration as to the *protection* every man might expect from the laws of his country. *Nullus liber homo capiatur, vel imprisonetur, aut disseisietur de libero tenemento suo, vel libertatibus vel liberis consuetudinibus suis, aut utlagetur, aut exulet, aut aliquo modo destruatur. Nec super eum ibimus* (says the statute in the name of the king), *nec super eum mittemus, nisi per legale judicium parium suorum, vel per legem terrae;* 'nor will we take possession of his effects, but by the judgment of his peers (which, as in another chapter, had in view the *comites et barones* and not the trial by jury, as has been commonly, but erroneously, supposed), *or by some other legal process or proceeding, adapted by law to the nature of the case.*' The statute goes on and says, *nulli vendemus, nulli negabimus, aut differemus rectum vel justitiam;* whereby the king in his own person declares, that he will neither sell, deny, or delay to any man a due administration of the law."

Reeves' History of the English Law, (Ed. Finlason), Vol. I, pp. 284–286.

Lord Coke, in his Institutes of the law of England, Part 2, page 50, speaking of the phrase "*per legem terrae*," in Chapter 29 of Magna Charta, says:

"*Nisi per legem terræ.* But by the law of the land. For the true sense and exposition of these words, see the statute of 37 E. 3, cap. 8, where the words, by the law of the land, are rendred *without due proces of law*, for there it is said, though it be contained in the great charter, that no man be taken, imprisoned or put out of

his free-hold *without proces of the law;* that is by indictment or presentment of good and lawfull men, where such deeds be done in due manner, or by writ originall of the common law. (25 E. 3, cap. 4).

" *Without being brought in to answere, but by due proces of the common law.*

" *No man be put to answer*, without presentment before justices, or thing of record, *or by due proces*, or by writ originall, according to the old law of the land. (28 E. 3, cap. 3; 37 E. 3, cap. 8; 42 E. 3, cap. 3).

" Wherein it is to be observed, that this chapter is but declaratory of the old law of England."

In Coke's Institutes, Part 1, 81 a., it is said: " The statute of Magna Charta is but a confirmation or restitution of the common law."

In a very recent commentary on the laws of England it is said:

" The laws of England are, therefore, in point of honor and justice, extremely watchful in ascertaining and protecting this right (of individual property). Upon this principle the great charter has declared that no freeman shall be disseized, or divested, of his freehold or of his liberties, or free customs, but by the judgment of his peers, or by the law of the land. And by a variety of ancient statutes (5 Edw. 3, c. 9; 25 Edw. 3, t. 5, c. 4; 28 Edw. 3, c. 3), it is enacted that no man's lands or goods shall be seized into the king's hands, against the great charter and the law of the land; and that no man shall be disinherited, nor put out of his franchises or freehold, *unless he be duly brought to answer, and be forejudged by course of law;* and if any-

thing be done to the contrary, it shall be redressed and holden for naught."

Broom and Hadley's Commentaries on the Law of England, Vol. 1, pp. 163, 164.

By way of definition, it may be stated that the application of the phrase "due process of law," is *not limited to proceedings wholly judicial.* It applies with equal force to *executive, administrative and quasi-judicial proceedings*, which in any manner deprive a person of his privileges, immunities, or property.

A State statute, or a section of a State statute, which is in *conflict* with the State constitution, or with the United States constitution, *cannot, and does not, provide* "due process of law,"—whether the proceedings under it are wholly judicial, or wholly administrative, or partly judicial and partly administrative. In other words, the fact that the legislature enacts a law, does not make that law "due process of law."

"The guaranty to the citizen of due process of law, is higher than any legislative enactment. It is fundamental. It underlies our National and State constitutions."

Cooley's Constitutional Limitations, 4th Ed., pp. 437, 438.

In *Bank of Columbia* v. *Okely*, 4 Wheat. (U. S) 244, the Supreme Court of the United States, speaking by Mr. Justice Johnson, gave this definition of "due process of law": "As to the words from *Magna Charta* incorporated in the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this:—that *they were intended to secure the individual from the arbitrary exercise of the powers of govern-*

ment, unrestrained by the established principles of private rights and distributive justice."

In *Westervelt* v. *Gregg*, 12 N. Y., 209, the Court of Appeals of New York, speaking by Mr. Justice Edwards, said :

"Due process of law undoubtedly means, in the due course of legal proceedings, according to those rules and forms which have been established for the protection of private rights. *Such an act as the legislature may, in the uncontrolled exercise of its power, think to pass, is, in no sense, the process of law designated by the constitution.*"

Mr. Webster, in his argument in the *Dartmouth College Case*, gave the following definition: "By the law of the land is most clearly intended the general law; *a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial.* The meaning is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society. *Everything which may pass under the form of an enactment is not therefore to be considered the law of the land.*"

Works of Webster, Vol. 5, p. 487.

In *Murray's Lesssee, et al.*, v. *Hoboken Land and Improvement Co.*, 18 How. (U. S.), 276, the Supreme Court of the United States, speaking by Mr. Justice Curtis, said :

"The constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised. *The article is a restraint*

on the legislative as well as on the executive and judicial powers of the government, and cannot be so construed as to leave Congress free to make any process 'due process of law,' by its mere will."

The Court of Appeals of New York, in *Stuart* v. *Palmer*, 74 N. Y., 195, said: "No case, it is believed, can be found in which it was decided that this constitutional guaranty,—due process of law,—did not extend to cases of assessment."

In *County of San Mateo* v. *Southern Pacific R. Co.*, 13 Fed. Rep., 722,—S. C. 8 Sawyer, U. S. C. C. Reps., 238,—Judge Sawyer in his opinion concurring with the opinion of Mr. Justice Field, said:

"To take one's property by taxation is to take or deprive one of his property; and if not taken in pursuance of the law of the land,—in some due and recognized course of proceedings, based upon well recognized principles in force before and at the time this clause was first introduced into the various constitutions, and the legislation of the country,—is to take it 'without due process of law.' The signification of these words has been the subject of judicial consideration and discussion in a vast number of cases, and their import has been determined to be the same as that of equivalent phrases in *Magna Charta*, from which the principle adopted was derived. * * * It is enough to say that it has been settled by judicial decision, as I think, that, *whether the proceeding be judicial, administrative or executive, if it affects life or liberty, or takes property directly, or imposes a charge which becomes the basis of taking property, some kind of notice or* OPPORTUNITY TO BE HEARD *on his own behalf, and* TO DEFEND HIS RIGHTS, *given to the person whose life or liberty is to be affected, or whose property is*

to be taken, or burdened with the liability, is an INDISPENSABLE ELEMENT,—*an essential ingredient,—of 'due process of law.'*"

It is clearly established law that the constitutional guaranty of "due process of law," extends to all enactments and proceedings by which the property of the citizen is taken, or may be taken from him. It applies with equal force whether the proceedings are executive and administrative, or judicial; or partly the one and partly the other. It is superior to legislative enactments. It extends to statutes providing for the assessment and valuation of property for the purpose of taxation.

WHAT IS REQUIRED TO CONSTITUTE "DUE PROCESS OF LAW?"

This constitutional guaranty, found in the Fourteenth Amendment to the constitution of the United States, is intended to protect the person against the *wrongful taking* of his life, liberty, or property, by the *State*. The Fifth Amendment gives to the person the same guaranty of protection against the *wrongful taking* of his life, liberty, or property, by the *United States*.

The words "*without* due process of law" clearly infer that *there may be a rightful taking* of life, liberty, or property; but no definition is given of what will constitute a *rightful taking*. The taking must be under a *law*. In effecting the taking there must be *proceedings*. The proceedings must be "*due*," i. e.,—*proper, suitable, appropriate to the circumstances*.

It seems clear, therefore, that to effect the taking of property by imposing taxes thereon, by "due process of law," *the law must provide and contain* the following elements and attributes, namely:

1. *It must provide a competent and suitable tribunal for the conduct of the proceedings.*

The proceedings may be informal and summary in their nature; and the tribunal may lack somewhat the formality, dignity and precision of a high judicial court; but the proceedings must be to such a degree formal and orderly, and the tribunal must be so limited and regulated, as to insure to the person affected, full right and opportunity to protect and defend his property against the threatened taxation.

2. *It must provide that the person upon whose property a burden and liability is about to be imposed and adjudged, shall have information of the amount and character of the charge intended to be fixed upon his property, before such charge is finally adjudged and made absolute.*

3. *It must provide that the person affected,—after receiving information of the amount and character of the charge intended to be fixed upon his property,—shall have an opportunity to be heard, and to defend himself and his property against such intended and threatened charge and liability.*

Due process of law certainly requires these three elements or attributes to be present in every law under which the property of any person may be taken by the State.

These three elements, — a competent tribunal, knowledge given to the accused of the charge made against him, and an opportunity given to the accused to defend against such charge,—are of necessity inherent in due process of law.

Measured by these three requirements the Act of March 6, 1891, cannot stand as a valid law, in so far as its provisions pertain to the assessment and valuation of

"railroad track" and "rolling stock" for the purpose of taxation.

These plaintiffs in error have the right to invoke the aid and protection of the constitutional guaranty, because railway corporations are *persons* within the intent and meaning of these constitutional provisions. So this Court has repeatedly decided.

Santa Clara County v. *Southern Pacific Railroad Company*, 118 U. S., 394, 396.

Pembina Mining Company v. *Pennsylvania*, 125 U. S., 181, 189.

Minneapolis and St. Louis Railway Company v. *Beckwith*, 129 U. S., 26, 28.

Home Insurance Company v. *New York State*, 134 U. S., 606.

The analysis of the Act of March 6, 1891, already given, *supra*, pp. 35 to 75, will render it unnecessary to refer to it, by specific section and provision, in the further argument of these causes.

A brief restatement of its provisions touching the proposition now under discussion, may, however, be of some service to the Court.

The statute expressly provides that township assessors, county assessors, county auditors, county treasurers and county boards of review, *must give to the owner or representative*,—whether an individual or a corporation,—*special notice*, and *a hearing, before any increase in valuation, or addition of property, can be made to the assessment list and valuations as made out and returned by such owner or representative.* In other words, if the local assessing officers desire to increase the valuation of, or add property to, the list of assessment and valuation as made out and returned by the owner, or repre-

sentative, *such owner, or representative, must have special notice, and an opportunity to be heard, before any final assessment and valuation is made.*

THIS STATUTE MAKES NO SUCH REQUIREMENT OF THE STATE BOARD OF TAX COMMISSIONERS, REGARDING THE ASSESSMENT AND VALUATION OF "RAILROAD TRACK" AND "ROLLING STOCK." IT DOES NOT REQUIRE ANY NOTICE WHATEVER TO BE GIVEN TO THE OWNER, OR REPRESENTATIVE, OF "RAILROAD TRACK" AND "ROLLING STOCK." IT DOES NOT REQUIRE THE STATE BOARD OF TAX COMMISSIONERS TO GRANT TO THE OWNERS OF "RAILROAD TRACK" AND "ROLLING STOCK" ANY HEARING, OR OPPORTUNITY TO BE HEARD,—EITHER WITH OR WITHOUT NOTICE,—AFTER SAID STATE BOARD HAS AGREED UPON ITS INTENDED ASSESSMENTS AND VALUATIONS, AND BEFORE MAKING ITS INTENDED ASSESSMENTS AND VALUATIONS OF THEIR "RAILROAD TRACK" AND "ROLLING STOCK" FINAL AND ABSOLUTE.

Are not these very significant facts? Do they not demonstrate a *personal and special discrimination* against corporations owning, or representing, "railroad track" and "rolling stock?"

The fact that this statute very carefully and expressly provides *special notice and a full hearing* for the owners, or representatives, of *all property,—excepting "railroad track" and "rolling stock,"*—before their assessments and valuations are made *final*, unmistakably proves that the legislature well understood that *notice*, and *an opportunity to be heard*, are requisites of "due process of law," and are as applicable to the *quasi-judicial* proceeding of assessment and valuation of property, for taxation, as to any proceeding *wholly* judicial.

It will not do to claim that the statute fixing the time and place of the annual sessions of the State Board

of Tax Commissioners, is all the notice required, and *that the right to a hearing may be inferred or implied*, although not reserved in, or provided by, the statute. The framework of this statute conclusively proves that the legislature did not so believe or intend. The statute fixes a time and place for the meeting of county boards of review and limits their sessions to *eighteen days*. But the statute requires two weeks' notice of that time and place to be published in a newspaper, of general circulation,—or if there be no newspaper, then by posting notices in three public places in each township; and in addition, requires *special notice* and *an opportunity to be heard*, to be given to every owner or representative of property, whose assessment list is to be changed, either by increasing the valuations made by the owner, or representative, or by adding property to his assessment list.

The statute also fixes the time and place for the meeting of the State Board of Tax Commissioners, and limits its session to FORTY DAYS: *but it requires no notice of the time and place of the meeting of the State Board of Tax Commissioners to be published in any newspaper; neither does it require any notice, or opportunity to be heard, either with or without notice, to be given to the owners, or representatives, of "railroad track" and "rolling stock" at any time before the assessment and valuation of their property is made final.* Why this discrimination? The legislature has, in this statute, in effect, said that "due process of law," requires notice, and an opportunity to be heard, to be given to the owners, or representatives, of *all property* subject to taxtion,—*excepting the owners, or representatives of "railroad track" and "rolling stock."* Why is this exception made? But one answer can be given,

namely: The legislature did not intend to grant to railroad corporations the protection of their rights by "due process of law,"—as to the assessment and valuation, for taxation, of their "railroad track" and "rolling stock." Hence the unlawful discrimination against them.

No argument is needed to establish the proposition that a law which gives to the State Board of Tax Commissioners *unrestrained and arbitrary power to* DENY to railway corporations any *hearing*, or *opportunity to be heard*, for the *correction of errors*, and the *reduction of excessive valuations*, AFTER said State Board has agreed upon its intended assessments and valuations of their "railroad track" and "rolling stock," and BEFORE it makes its intended assessments and valuations final and absolute; and which gives to said State Board arbitrary power to render any hearing for the correction of errors utterly impossible, *lacks every essential element of "due process of law."*

It has already been shown that this law does give to the State Board of Tax Commissioners just such arbitrary powers, and that they were exercised against these plaintiffs in error, in the pretended assessments and valuations here under consideration, *supra* pp. 47 to 54.

Authorities in support of our *first* proposition, stated, *supra* pp. 86, 87, are so abundant that embarassment arises in attempting to make selection. A few of the leading decisions will be here presented at some length; while many other cases will be merely cited, because time and space forbid quotations from the opinions rendered in them.

The decision in *County of San Mateo* v. *Southern Pacific R. Co.*, 13 Fed. Rep., 722 to 789, S. C. 8, Sawyer

U. S. C. C. Reps. 238 to 312, is a leading decision on almost every point presented for decision by the cases at bar. It was heard by Mr. Justice Field of the Supreme bench, and Judge Sawyer, U. S. Circuit Judge for the Ninth Circuit. Senators Edmunds and Conkling took part in the argument in behalf of the railroad company. The argument consumed nine days. Mr. Justice Field announced the decision in an opinion which from that day to this has been universally regarded as authority of the highest rank. It is cited constantly in text books and decisions as established law. Judge Sawyer also submitted a very able concurring opinion.

The case involved the taxation of certain classes of property of the railroad company by the California State Board of Equalization. That Board was created and its powers and duties were defined by the State constitution.

A statute had been passed by the legislature enforcing, in detail, the provisions of the constitution touching this matter, but that law was held invalid on account of certain defects in its enactment. The main fight was made directly against the constitutional provisions creating the State Board of Equalization on the ground that they did not provide "due process of law" as to the taxation of certain classes of railroad property, and were, therefore, in conflict with the Fourteenth Amendment to the constitution of the United States. The attack was made on the ground of discrimination against railroad corporations, *and because no provision was made for giving them an opportunity to be heard respecting the valuation of their property for taxation.*

The decision was in favor of the railroad company and held the whole assessment invalid and absolutely void.

Upon the point now under discussion,—the necessity of a provision granting the taxpayer *the right to be heard, before* the assessment and valuation of his property, for taxation, is made final and absolute,—Mr. Justice Field said:

"The assessment of the franchise, roadway, roadbed, rails, and rolling stock of railroads operated in more than one county in the State is to be made by this State Board. And in making it, the board is not required to give any notice to the owners, *nor is any provision made for affording them an opportunity to be heard respecting the valuation of their property.*

* * * "There is another objection of equal significance, which goes to the validity of the whole assessment. *No opportunity was afforded to the defendant to be heard respecting it before the State Board of Equalization.* * * *

"The presentation to the State Board by a corporation of a statement of its property and of its value, which it is required to furnish, *is not the equivalent to a notice of the assessment made and of an opportunity to be heard thereon.* It is a preliminary proceeding, and until the assessment the corporation cannot know whether it will have good cause of complaint. No hearing upon the statement presented is allowed, and when the assessment is made the matter is closed; *no opportunity to correct any errors committed is provided.* The presentation of the statement can no more supercede the necessity of allowing a *subsequent hearing* of the owners, than the filing of a complaint in court can dispense with the right of the suitor and his contestant to be there heard.

"There being, then, *no provision of law* giving to the company notice of the action of the State Board,

and an opportunity to be heard respecting it, is the assessment valid? Would the taking of the company's property in the enforcement of the tax levied according to the assessment be depriving it of its property without due process of law? It seems to us there can be but one answer to these questions. There is something repugnant to all notions of justice in the doctrine that any body of men can be clothed with the power of finally determining the value of another's property, according to which it may be taxed, *without affording to him an opportunity of being heard respecting the correctness of their action.* And the injustice is strikingly apparent when the property consists of the great number of particulars which go to make up the taxable estate of a railroad company, requiring for any just estimate of their value accurate knowledge upon a multitude of subjects, not usually possessed without special study. We cannot assent to any such doctrine. It conflicts with the great principle which lies at the foundation of all just government, that no one shall be deprived of his life, his liberty, or his property without an opportunity of being heard against the proceeding. The principle is as old as *Magna Charta*, and is embodied in all the State constitutions, and in the Fourteenth Amendment of the Federal constitution. The provision in this amendment is in the form of an interdict upon the States. 'Nor shall any State deprive any person of life, liberty, or property without due process of law.' And by due process is meant one which, following the forms of law, is appropriate to the case and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and *it must give the party to be affected*

an opportunity of being heard respecting the justice of the judgment sought. Without these conditions entering into the proceeding, it would be anything but due process. * * *

"The statute fixes the rate of taxation upon the value of the property and appoints officers to estimate and appraise the value. Due process of law in the proceeding is deemed to be pursued when, *after the assessment is made by the assessing officers* upon such information as they may obtain, *the owner is allowed a reasonable opportunity, at a time and place to be designated, to be heard respecting the correctness of the assessment, and to show any errors in the valuation committed by the officers.* Notice to him will be deemed sufficient, if the time and place *of hearing* be designated *by statute.* But whatever the character of the proceeding, whether judicial or administrative, summary or protracted, and whether it takes property directly, or creates a charge or liability which may be the basis of taking it, the law directing the proceeding must provide for some kind of notice, and *offer to the owner an opportunity to be heard*, or the proceeding will want the essential ingredient of due process of law. Nothing is more clearly established by a weight of authority absolutely overwhelming than that *notice and opportunity to be heard* are indispensable to the validity of the proceeding.

"In *Davidson* v. *New Orleans* the Supreme Court of the United States assumed this position to be unquestionable."

In his concurring opinion Judge Sawyer quoted from an English decision as follows:

"In *Cooper* v. *Board of Works*, 108 Eng. C. L. R., 181, in which was in question the action of the Board

of Public Works, in pursuance of a statute which did not require notice, Willis, J., said: 'I apprehend that a tribunal, which is by law invested with power to affect the property of one of her majesty's subjects, *is bound to give such subject an opportunity of being heard before it proceeds;* and that that rule is of universal application, and founded upon the plainest principles of justice.'"

13 Fed. Rep., pp. 728, 748, 750, 751, 752, 765.

About one year after the case of *County of San Mateo* v. *Southern Pacific R. Co.*, *supra*, was decided, the case of *County of Santa Clara* v. *Southern Pacific R. Co.*, 18 Fed. Rep., 385 to 455, S. C. 9 Sawyer U. S. C. C. Reps. 165 to 210, was decided by Mr. Justice Field, Circuit Judge Sawyer concurring. This case presented again all the essential questions presented in the *San Mateo* case. Touching the point that a *right to be heard* must be reserved to the taxpayer, *by the law*, Mr. Justice Field said:

"In the argument of counsel, the distinction between taxes for licenses and franchises, and taxes upon values, seems to have been overlooked, and because no notice is required in the former case, and no opportunity given to be heard, therefore it is contended that the rule is not sound; that notice is necessary, and an opportunity of being heard in the latter case where an assessment is made upon property and values are founded upon evidence; yet the distinction is plain and everywhere recognized. * * *

"The notice to which we refer need not be a personal citation; it is sufficient if it be given by a law designating the time and place *where parties may contest the justice of the valuation.* As a general rule only a statutory notice is given. The State may designate the

kind of notice and the manner in which it shall be given. All that we assert, or have asserted, is that there must be a notice of some kind which will call the attention of the parties to the subject, *and inform them when and where they will be permitted to expose any alleged wrong in the valuation of which they may complain.*"

In his concurring opinion upon this point, Judge Sawyer said:

"In view of the fact that no decision of a judge or statement of the rule by text writers, to the contrary, has been brought to our notice, we think that the Court was fully justified in the *San Mateo Case*, in expressing the belief that the authorities established, beyond all controversy, that somewhere in the proceeding of assessing a tax upon property where it is necessary to ascertain its amount, character, and value, as a means of apportionment under a law or State constitution,—at some point, *before the amount of the assessment becomes finally and irrevocably fixed*,—the statute or State constitution must provide for notice to be given to the owner of the property taxed, *and an opportunity be afforded to make objections and be heard upon them.* * * * The notice may not be required to be personal to each individual, or any thing other than statutory, but the statute should fix some time within and place at which he may appear, *and must give to the taxpayer a right and some opportunity to appear and be heard upon the matter.*"

18 Fed. Rep., 409, 410, 425, 426.

These two cases were taken to the Supreme Court of the United States. While there pending, the legislature of California enacted a new law curing the defects complained of by the railroad corporations.

After the new law went into force, the writ of error in the *San Mateo Case* was dismissed on a compromise settlement. 116 U. S., 138.

The *Santa Clara County Case*, was decided by the Supreme Court in May, 1886. But the Supreme Court *affirmed* the judgment rendered by Mr. Justice Field, without passing upon the questions chiefly argued before the Circuit Court. The Supreme Court held the entire assessment invalid because the State Board of Equalization *exceeded its jurisdiction* by assessing the *fences* along the right of way *as a part of the "roadway"* of the railroad company. The Court in basing its decisions on this single point declined to consider the other questions presented by the record.

118 U. S., 394.

In *Scott* v. *City of Toledo*, 36 Fed. Rep., 385, Mr. Justice Jackson,—then Circuit Judge,—in holding the city ordinance involved in the case unconstitutional and void, very thoroughly considered the exact point under discussion, and reviewed the authorities bearing thereon, in an opinion worthy of careful study. I quote two paragraphs found on page 397:

"The owner must in some form, *in some tribunal or before some official authorized to correct errors or mistakes, have an opportunity afforded him to be heard* in respect to the proceedings under which the property is to be taken or burdened, *before the tax or assessment becomes final and effectual*, in order to constitute such procedure 'due process of law.' If the tax or assessment can, under the State law, be enforced or collected only by legal proceedings, in which any and all defenses, going either to the validity or amount of such tax or assessment may be made, *that will afford the opportunity to be heard*,

and in such cases the proceeding cannot be said to deprive the owner of his property 'without due process of law.'"

In *Palmer* v. *McMahon*, 133 U. S., 669, Mr. Chief Justice Fuller, in delivering the opinion of the Court, said: "The imposition of taxes is in its nature administrative and not judicial, but assessors exercise *quasi*-judicial powers in arriving at the value, *and an opportunity to be heard should be and is given under all just systems of taxation according to value.*

"It is enough, however, *if the law provides for a board of revision authorized to hear complaints respecting the justice of the assessment*, and prescribes the time during which and the place where such complaints may be made."

The point of this decision is that the taxpayer *must be given* BY THE LAW, *an opportunity to be heard;* and that *the law must provide a tribunal of revision* authorized to hear the taxpayer touching the correctness of the valuations of his property, and the validity of the assessments imposed upon his property.

In *Spencer* v. *Merchant*, 125 U. S., 355, 356, Mr. Justice Grey, in announcing the decision of the Court, said: "If the legislature provides *for notice to and hearing of each proprietor*, at some stage of the proceedings, upon the question of *what proportion of tax* shall be assessed upon his land, there is no taking of his property without due process of law."

In *Yick Wo* v. *Hopkins*, 118 U. S., 369, 370, 371, Mr. Justice Matthews, in holding a city ordinance void because it failed to provide "*due process of law*" and "*equal protection of the laws*," said:

"It is contended on the part of the petitioners,

that the ordinances for violations of which they are severally sentenced to imprisonment, are void on their face, as being within the prohibitions of the Fourteenth Amendment; and, in the alternative, if not so, that they are void by reason of their administration, operating unequally, so as to punish in the present petitioners what is permitted to others as lawful, without any distinction of circumstances,—an unjust and illegal discrimination, it is claimed, which, though not made expressly by the ordinances, *is made possible by them.*

"When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of *purely personal and arbitrary power.* Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision; and in many cases of mere administration the responsibility is purely political, no appeal lying except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage. But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law which are the monuments showing the victorious progress of the race in securing to men

the blessings of civilization under the reign of just and equal laws, so that, in the famous language of the Massachusetts Bill of Rights, the government of the commonwealth 'may be a government of laws and not of men.' For, *the very idea that one man can be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.* * * * In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of, as tried merely by the opportunities which their terms afford, of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion, that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, *if it is applied and administered by public authority with an evil eye and an unequal hand*, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, *the denial of equal justice is still within the prohibition of the constitution.*

This principle of interpretation has been sanctioned by this Court in *Henderson* v. *Mayor of New York*, 92 U. S., 259; *Chy Lung* v. *Freeman*, 92 U. S., 275; *Ex parte Virginia*, 100 U. S., 339; *Neal* v. *Delaware*, 103 U. S., 370; and *Soon Hing* v. *Crowley*, 113 U. S., 703."

In *Lent* v. *Tillson*, 140 U. S., 326, 327, 328, 329, this Court held the statute of California, providing for the widening of Dupont street, in the city of San Francisco, and for the assessments of benefits and damages resulting from such widening, *valid;* because said statute provided ample opportunity to every property owner assessed *to be heard, after due notice, and to contest the correctness of the assessments.*

In announcing the decision Mr. Justice Harlan said:

"Any person interested, and who felt himself aggrieved by the action or determination of the board, as indicated by its report, was permitted, at any time within the above thirty days, to apply by petition to the County Court of the city and county, showing his interest in the proceedings of the Board of Commissioners, and his objections thereto, for an order that would bring before that Court the report of the board, together with such pertinent documents or data as were in its custody, and were used in preparing its report. It was made the duty of the party filing the petition to serve, on the same day, a copy thereof on at least one of the members of the Board of Commissioners, who were at liberty to appear by counsel, or otherwise, and make answer to it. The Court was also empowered to hear the petition, and set it down for hearing within ten days of its being filed.

"Provision was made for the taking of testimony

upon the hearing, and the Court was authorized to use its process to compel the attendance of witnesses and the production of books, papers or maps in the custody of the board, or otherwise. The discretion given to the Court, after hearing and considering the application to allow or to deny the order prayed for was, of course, to be exercised judicially, according to the showing made by the petitioners. And that complete justice might be done, the Court was invested with power, not simply to approve and confirm the report of the board, but to refer it back with directions to alter or modify the same in the particulars specified by the Court. Until such alterations and modifications were made, the Court was under no duty to approve or confirm the report; and until it was approved and confirmed, the board was without authority to proceed at all in the work committed to it by the statute."

After quoting from the decisions in *Davidson* v. *New Orleans*, 92 U. S., 97, 104; and *Hagar* v. *Reclamation District*, 111 U. S., 701, 708; and citing the decisions in *Kentucky Railroad Tax Cases*, 115 U. S., 321, 331, and *Spencer* v. *Merchant*, 125 U. S., 345, 355, touching the questions of *notice* and *an opportunity to be heard*, the opinion proceeds as follows:

"Tested by these principles, the statute providing for the widening of Dupont street cannot be held to be repugnant to the constitutional requirement of due process of law. The *notice* by publication to all who own property liable to be assessed for the cost of that improvement was appropriate to the nature of the case, and was reasonable in respect to the length of time prescribed for the publication. *And ample opportunity was given to all persons interested to test in a court of competent*

jurisdiction the fairness and legality of any assessment proposed to be made upon their property for the purposes indicated by the statute. That Court had power to require such alterations or modifications of the report of the Board of Commissioners as justice demanded. It was not bound to approve any report that did not conform to its judgment as to what was right; and without such confirmation the board could not proceed in the execution of the work contemplated by the Legislature."

In support of this construction of the statute involved Mr. Justice Harlan quotes, with approval, from the decision of the Supreme Court of California, rendered in this same case, as announced by Mr. Justice Temple, as follows:

"'We are not considering here a statute *which is silent as to the hearing.* The provisions in question were undoubtedly inserted in view of the constitutional requirement, and for the purpose of affording *that opportunity to be heard, without which the law would be void.* To give the statute the construction contended for would not only defeat the evident purpose, but would make the whole proceeding farcical. * * * The statute has evidently been patched and tinkered after it was first drawn, and incongruous matter injected into the body of it. *But it still provides for a full hearing*, and that the Court may alter and modify. And it seems that such action is to be based upon the hearing provided for.'"

The decision in *Paulsen* v. *Portland*, 149 U. S., 30, 37 to 41, rendered April 17, 1893, is in express affirmance of the doctrine that *an opportunity to be heard*, before any assessment or lien is made final and absolute, *must be provided by the law.* In that case it was contended

that,—notwithstanding the fact that the ordinance in express terms provided for *a hearing*, and notwithstanding the further fact that *notice* by publication was given, —the proceedings were void because the *ordinance* did not in clear and express terms *require* notice to be given. In the decision it is, in substance, held that the *charter* of the city of Portland as finally construed by the Supreme Court of Oregon, requires notice, and that therefore, express provision for notice need not be made in the *ordinance*. It is further held that where a statute or ordinance *expressly requires a hearing to be given* to each taxpayer, such law or ordinance *necessarily implies that notice must be given*. Upon this last point Mr. Justice Brewer, in announcing the decision of the Court, said:

"By the same ordinance the city also provided that the cost of the sewer should be distributed upon the property within the sewer district, and appointed viewers to estimate the proportionate share which each piece of property should bear. Here, for the first time in proceedings of this nature, where an attempt is made to cast upon his particular property a certain proportion of the burden of the cost, *the taxpayer has a right to be heard*. The ordinance named a place at which the viewers should meet, *directed* that they should hold stated meetings at that place, *and that all persons interested might appear and be heard* by them in the matter of making the estimate. The viewers, upon their appointment, gave notice by publication in the official paper of the city of the time of their first meeting. Notice by publication is a sufficient notice in proceedings of this nature. *Lent* v. *Tillson*, 140 U. S., 316, 328. As the form of the notice and the time of its publication are

not affirmatively disclosed in the complaint, it must be assumed that there was no defect in respect to these matters. The precise objection is that, although proper and sufficient notice may have been given, it was not in terms prescribed by the ordinance appointing the viewers. But, as held by the Supreme Court of Oregon in the case referred to, (*Minard* v. *Douglas Co.*, 9 Or., 206,) that which is implied in a statute is as much a part of it as that which is expressed; and *where a statute or an ordinance provides for stated meetings of a board, designates the place at which the meetings are to be held, and directs that all persons interested in the matter may be heard before it*, it is, as said by Judge Strahan, not a strained interpretation that it is implied thereby that some suitable notice shall be given to the parties interested."

The case of *Stuart* v. *Palmer*, 74 N. Y., 183, is a leading case upon several of the points involved in the litigation at bar. It is cited in standard text books, and is constantly cited and quoted with approval by State Courts of last resort, and by the Circuit and Supreme Courts of the United States. The following extracts from the decision are quoted from pages 188, 190, 191, 192 and 193, in support of the proposition now under discussion:

"It is not enough that the owners may *by chance* have notice, or that they may *as a matter of favor* have a hearing. The law *must* require notice to them, and *give them the right to a hearing and an opportunity to be heard*. It matters not, upon the question of the constitutionality of such a law, that the assessment has, in fact, been fairly apportioned. *The constitutional validity of a law is to be tested, not by what has been done under it*, BUT WHAT MAY, BY ITS AUTHORITY, BE DONE. * * *

"The Legislature can no more arbitrarily impose an assessment for which property may be taken and sold, than it can render a judgment against a person without a hearing. It is a rule founded on the principles of natural justice older than written constitutions, that a citizen shall not be deprived of his life, liberty or property, *without an opportunity to be heard in defense of his rights*, and the constitutional provision that no person shall be deprived of these 'without due process of law' has its foundation in this rule. This provision is the most important guaranty of personal rights to be found in the Federal or State constitution. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty or property. This the Legislature cannot do nor authorize to be done. 'Due process of law' is not confined to judicial proceedings, but extends to every case which might deprive a citizen of life, liberty, or property, whether the proceeding be judicial, administrative, or executive. (*Weimer* v. *Bruenbury*, 30 Mich., 201.) This great guaranty is always and everywhere present to protect the citizens against arbitrary interference with these sacred rights. * * * *A hearing or an opportunity to be heard is absolutely essential.* We cannot conceive of due process of law without this. * * * In *Patten* v. *Green*, (13 Cal., 325), Baldwin, J., says: 'We think it would be a dangerous precedent to hold that an absolute power resides in the supervisors to tax land as they may choose without giving any notice to the owner. It is a power liable to great abuse. The general principles of law applicable to such tribunals oppose the exercise of any such power.' * * * In *Matter of Trustees of N. Y. Prot.*

Epis. Public School (31 N. Y., 574), Judge Denio says: 'It is manifestly proper that the taxpayers should have notice of the imposition proposed to be laid upon them, *and an opportunity for* making suggestions and explanations to the proper administrative board or office.' In *Ireland* v. *City of Rochester* (51 Barb., 414), Judge James C. Smith, speaking of the imposition of assessments, says: 'It is in the nature of a judicial proceeding against them, and its effect is to take their property for public use. * * * It is a plain principle of justice applicable to all judicial proceedings, that no person should be condemned, or shall suffer judgment against him *without an opportunity to be heard;*' and he says that an act assessing 'persons without notice transcends the power of the Legislature, and is itself void.' *In the Matter of Ford* (6 Lans., 92), Judge Gilbert says: That the duties of assessors in making assessments are of a judicial nature and that 'it is a fundamental rule that in all judicial or *quasi* judicial proceedings, whereby the citizen may be deprived of his property he shall have notice, *and an opportunity of a hearing before the proceedings can become effectual.*'"

The Supreme Court of Indiana has repeatedly decided that in every law, under which proceedings may be had for the taking of property, or for imposing a burden upon it which may result in taking it, *provision must be made, by the law,* for giving *notice,* and *an opportunity to be heard, for the correction of errors or overvaluations in the proposed assessment, before it is made final.*

The case of *Garvin* v. *Daussman, et al.,* 114 Ind., 429, is a leading case upon this point. The decision of our Supreme Court, as rendered by Chief Justice Mitchell, seems conclusive in its support of the exact point now

under discussion. The case involved a tax or assessment, against abutting property, for a street improvement. Payment of the assessment was resisted on the ground that the charter of the City of Evansville, and the ordinance under which the assessment was made, were invalid, because neither the charter, nor the ordinance, made any provision for notice to the owners of property to be affected by street improvements, or for an appeal from the assessments. It was claimed that this resulted in the taking of property without "due process of law."

In the opinion, Chief Justice Mitchell said:

"It is, without doubt, essential to the validity of every law under which proceedings may be had for the taking of property, or to impose a burden upon it which may result in taking it, that *the law make provision* for giving some kind of *notice* at some stage in the proceeding, *and that it afford the owner an opportunity to be heard concerning the legality of the assessment, before some tribunal or body authorized to correct errors, or give appropriate relief, before the property is taken or the charge made absolute.* * * *

"Any proceeding, therefore, the result of which is to deprive the owner of his property, or to impose a burden upon, or create a charge against it, and which is carried on under a law which makes no provision for notice, *and affords the owner no opportunity to be heard concerning the correctness of the assessment*, and whether the amount charged against him or his property was ascertained and apportioned in good faith and in the manner provided by law, is in contravention of the constitution and *lacks the essential element of 'due process of law.*" The fact must, however, be kept in view that

the notice and hearing which the constitution demands need only be such as are adapted to the nature of the assessment proposed, and such as afford to each individual affected *the opportunity to show that*, according to the method prescribed by competent authority for making the assessment, *the amount charged against him is incorrect.* * * * * If the law directing the proceedings *affords the property owner an opportunity to be heard*, after due notice, in a tribunal competent to afford him relief appropriate to the nature of the case, *so that the charge against his property only becomes conclusive after the opportunity for a hearing has been had*, it can not be said that his property has been burdened or taken without due process of law."

The especial attention of the Court is directed to the fact that, in this decision, and in all the thoroughly considered decisions on this point, chief emphasis is put upon the point that "due process of law" *requires* that *every statute* under which property of the citizen may be taken, or is made subject to a lien for taxes or assessments, *must give the owner a hearing, or an opportunity to be heard, before the tax or assessment is made final.* The matter of *notice* is trivial and unimportant as compared with the *right to be heard.* The right of the owner *to demand and receive a hearing before the assessment and valuation of his property, for taxation, is made final, is the essential and indispensable requirement.*

Mere *notice* of the time when, and the place where, a judgment will be rendered against a man, imposing a lien upon his property, would be *valueless* to that man, *unless he has reserved to him, by the law, the right to a hearing before the judgment against him is made final.* Just upon this point the loose and unguarded expressions of

some Courts have resulted in some seeming confusion of ideas. This arises from the fact that, in some decisions, the word *notice* is used in the sense of being synonymous with the *right to a hearing*. The two are entirely distinct, and represent entirely distinct and different ideas. Notice of a coming event is one thing. *The right to be heard touching that event and its ulimate results, is a very different thing.*

Suppose it to be admitted that the sworn schedules, assessment lists and valuations required of railroad corporations, by sections 77, 83 and 85 of the Act of March 6, 1891, do constitute the *primary assessments and valuations*, for taxation, of "railroad track" and "rolling stock:" Suppose it to be further admitted, that the fact that the statute fixes the time and place of the annual session of the State Board of Tax Commissioners, renders unnecessary any further *notice*,—either by publication, or by personal service,—to the owners, or representatives, of "railroad track" and "rolling stock," that, *at some time during the forty days of its session*, said State Board will consider said schedules, assessment lists and valuations, and will assess their "railroad track" and "rolling stock." Still the statute remains fatally defective, invalid and unconstitutional, *because it utterly fails to require the State Board of Tax Commissioners to give to the owner, or representative, of "railroad track" and "rolling stock" any notice or information of the amount and character of its assessments and valuations, agreed upon and intended to be made by it, at any time before its final adjournment: And because said statute utterly fails to require said State Board of Tax Commissioners to grant to railway corporations, or their representatives any* HEARING OR OPPORTUNITY TO BE HEARD,

for the correction of errors, and the reduction of excessive, oppressive and unlawful assessments and valuations, at any time after said State Board has agreed upon its intended assessments and valuations, and before its said intended assessments and valuations are made final and absolute, or at any time before the final adjournment of said State Board.

It is just *these omitted requirements*, which the decisions of the Courts, and the standard text books of the law, hold to be *vitally and indispensably necessary to "due process of law."*

The State Board of Tax Commissioners has sole and exclusive jurisdiction, touching the assessment and valuation, for taxation, of "railroad track" and "rolling stock." It is the only assessor of these two classes of property. Its assessments and valuations are final and conclusive. There is no appeal from them. There is no review of them. Hence *the mere fact that the statute fixes the time and place of the meeting* of the State Board of Tax Commissioners, *is not such notice as is required by due process of law. It is not such notice as gives an opportunity to be heard for the correction of errors and oppressive assessments agreed upon and intended to be made by said State Board.* It might as well be claimed that *notice* of the *beginning of the term* of Court as *fixed by statute*, is all the notice that "due process of law" requires to be given to a person who rests under legal obligations, prior to the rendition of final judgment against him.

In *Campbell, et al.*, v. *Dwiggins, Treasurer*, 83 Ind., 482, it is said: "In every system of assessment and taxation, it seems to have been the general rule in this country to provide that the person to be assessed shall be notified *and given an opportunity to be heard* at some

time in the progress of the proceeding; *and this is required by 'due process of law.'* " This was said in holding two sections of the *drainage law* unconstitutional and void.

In *Tyler, Township Trustee*, v. *State, ex rel. Wilson*, 83 Ind., 565, 566, in again holding the same sections of the drainage law unconstitutional and void, the Court, by Judge Howk, said:

"The effect of these sections would be to deprive the owner of the lands assessed of his property to the extent, at least, of the amount of the assessment, without notice of the proceedings to be had, *and without a hearing or an opportunity to be heard at any stage of the proceedings, and, therefore, without 'due process of law.'* "

In *Fries* v. *Brier, et al.*, 111 Ind., 66, it is said:

"The right of the property owner to have notice *and to be heard before his property can be taken*, or *before a burden can be imposed upon it, must be provided for* at some proper stage of the proceedings, and *any enactment* which attempts to justify a tax or assessment *without making such provision* is universally regarded as an infringement of the constitution."

In *Johnson, Surveyor*, v. *Lewis*, 115 Ind., 492, Judge Mitchell, in rendering the decision of the court said:

"It is quite true that the constitution sanctions no law under which a lien can be *conclusively imposed* upon property without first giving the owner notice, *and affording him an opportunity to be heard in some tribunal competent to administer adequate relief.*"

In *McEneney, et al.*, v. *Town of Sullivan*, 125 Ind., 409, 410, Judge Elliott said: "Notice at some stage of the proceedings *prior to a conclusive judgment* is requisite in order to authorize the subjection of property to a

special lien for a local assessment. The trend of the decisions of the Federal Courts is very much in the direction that where there is no notice there is no process of law within the meaning of the Fourteenth Amendment. If that be so, the question has become a Federal one, and the decisions of the United States Supreme Court are controlling, and they seem to require notice as an element of due process of law. But, however this may be, our own decisions, and those of many other States, do affirm that notice is essential. As these decisions declare the law, it is the duty of the Legislature to provide for some notice, but it is within its power to prescribe what the notice shall be."

It is evident that in this statement the word "notice" is used in the broad sense of not only notification, but also of *the right and opportunity to be heard.* This is proved by the next sentence of the opinion, which is as follows: "It is probably true *that a notice so palpably unreasonable as to be of no avail* would not meet the requirements of the constitution, and it would be the duty of the Courts to adjudge it insufficient."

The only value of notice is to inform the person when and where he can *demand and receive a hearing.* The *right to demand a hearing* must be a *right given by law,*—not a mere *matter of grace.* If the law *gives no right to a hearing,* and *provides no opportunity to be heard,* notice is valueless and of no avail.

If, in the above quotation from the decision in *McEneney* v. *Town of Sullivan, supra,* the word *notice* is to be taken in the common and normal meaning of *notification* to the person whose interests are involved, the application of the decision to the statute here involved is pertinent and very suggestive. This statute fixes the

time and place of the annual session of the State Board of Tax Commissioners, and limits the duration of the session to *forty days.*

No publication of notice of the time and place of meeting is required. No special notice, either by publication or personal service, is required to be given to the owner, or representative, of "railroad track" and "rolling stock," notifying him *when his* "railroad track" and "rolling stock," will be assessed and valued for taxation. *No notice or information is required to be given to him that the State Board has agreed upon its intended assessment and valuation of his "railroad track" and "rolling stock," and informing him of the character and amount of such intended assessment and valuation.*

No right to a hearing is given. No opportunity to be heard is provided, either with or without notice.

Does this law give any legal notice at all? If so, is it a reasonable notice?

A railway company owns a line of railway extending through counties in the extreme northern portion of the State, one hundred and fifty miles from Indianapolis. Is it reasonable to require that company—by its officers—to remain in attendance at Indianapolis for *forty days*, in the hope that the State Board of Tax Commissioners may possibly, *purely as a matter of grace and favor*, grant it *a hearing* for the correction of errors and to test the validity of the charges imposed, after the Board has decided upon the assessment and valuation of the company's "railroad track" and "rolling stock," and before the assessment and valuation, so decided upon, is made absolute?

To use again the words of Judge Elliott, *supra*, is not such a notice,—if it be a legal notice,—"*so palpably*

unreasonable as to be of no avail," and therefore in direct conflict with the constitutional requirements regarding "due process of law?"

The decision of the Supreme Court of Indiana, as announced by Chief Justice Elliott, in *Kuntz* v. *Sumptioe, Treasurer*, 117 Ind., 1, is very strongly in support of the proposition now under discussion. The case hinged upon the validity of the law authorizing county boards of equalization to increase the assessment and valuation of an individual taxpayer. The law failed to provide for notice to the taxpayer, and failed to grant him any hearing, or opportunity to be heard.

This law fixed the time and place for the meeting of the county board of equalization, and limited the duration of its session to *fifteen days*. This law did more than that. It required *two weeks'* publication of the notice of the time, place and purpose of such meeting, either in a newspaper of general circulation, or, if no newspaper was published in the county, then by posting notices in three public places in each township of the county. Now let us see what the Supreme Court of Indiana, by Chief Justice Elliott, said, regarding the provisions of this statute, touching its failure to give the individual taxpayer reasonable notice, and particularly, touching *its failure to grant to the taxpayer the right to be heard.* The decision on these points is as follows: "We do, however, affirm that they are invalid in so far as they assume to confer authority upon the board to *conclusively change* the valuation placed upon property by an individual taxpayer, or to add property to his list. We are satisfied that the statute is in conflict with the constitution, for the reason that it assumes to confer authority upon the Board to add to a citizen's taxes

without giving him an opportunity to be heard, and thus denies him due process of law. Our judgment is, that after a citizen has listed his property, *no change* in the list can be compulsorily made *by an officer or tribunal whose decision is final, until, by due process of law, he has had an opportunity to vindicate the correctness of his list or resist an attempt to increase the valuation.* The presumption is that men obey the law and act in good faith, and under this long settled rule it must be held that, until the contrary is shown, the taxpayer is entitled to have his list accepted as correct and just. *The contrary cannot be legally and conclusively shown unless he has an opportunity to be heard, and this opportunity he cannot have unless notice is given him before a conclusive decision is made.* The statute does not provide for notice to taxpayers whose taxes it is proposed to increase, and *this infirmity destroys it*, in so far as it affects such citizens. It is not enough that in fact the taxpayer does have some notice or information, for *the law must provide for notice or else no legal notice can be given.* A man may be subpoenaed as a witness in an action pending against him, but unless he is summoned or notified as a party, under some law authorizing a summons or notice, the proceedings are utterly void. A man may be served with a written notice that a petition for a ditch is pending, but if there be no law authorizing notice it will be unavailing. *A notice not authorized by law, is, in legal contemplation, no notice.* * * * We also affirm that where individual property rights are affected there must be provision for notice *made by law, before* there can be a final and *conclusive adjudication.* Only the law can prescribe the form of the notice, and *the law must provide for it.* Where, therefore, individual rights are concerned, and the mat-

ter is one upon which a party is entitled to be heard, a proceeding conclusively and finally disposing of individual property rights will be void, unless founded upon a law, providing for notice of some kind. * * *

"But, in adding to property listed by the taxpayer, or in increasing the valuation put upon listed property by him, a board of equalization does not exercise arbitrary power or unrestricted discretion; on the contrary, it must be guided by the law and the facts, and has no right to add to the list of the taxpayer property he does not own; nor has it the authority to increase the valuation of property without giving the taxpayer legal notice, *thus affording him an opportunity to adduce evidence or furnish information*. It is a serious matter to charge a person with fraudulently or falsely listing his property, and to add to his list, or to increase the valuation of property, imposes upon him a burden, for it deprives him of property in the form of money. * * *

"The ultimate conclusion which we reach is, that, *where a conclusive decision is authorized, the statute itself must provide for notice, and secure it to the taxpayer, not as matter of favor, but as matter of right*. * * *

"The fact that the judgment is conclusive supplies a strong reason for holding that the *taxpayer should have an opportunity to be heard*, and that he should be heard *before* his list or his valuation is set aside or changed. The power to hear and determine, where there is a question admitting of controversy and the entire matter is not one of absolute and arbitrary discretion, implies that in reason and justice the law should, by making provision for notice, give the parties an opportunity to be heard, for otherwise it cannot be justly said there is due process of law. * * *

"It would be almost as unjust to compel such a taxpayer to be *constantly on watch during the meeting of the board* as to compel a defendant who has failed to pay a note, violated a covenant, or committed a trespass, to watch the dockets of the court during term-time."

Apply this decision to the law under consideration, which limits the session of the State Board of Tax Commissioners to *forty days*,—instead of *fifteen days*, as was the case in the law which this decision held unconstitutional,—and the absurdity of the claim that the fixing of the time and place of meeting of the State Board by the statute is all the *notice* that due process of law requires, becomes strikingly apparent. Especially so when it is remembered that this law utterly fails to *require* the State Board to grant to railway corporations *any hearing, at any time;* and that its assessments and valuations are *final* and *absolute*.

It should also be remembered that all that is said in this decision, and others above quoted, about the sworn lists and assessments of taxpayers, is equally applicable to railway corporations. They, also, are required to make and return *sworn schedules, lists and valuations* of their "railroad track" and "rolling stock." These plaintiffs made and returned such schedules, lists and valuations under the oaths of two of their chief officers.

Record P. C. C. & St. L. Ry. Co. Case, pp. 112 to 135.

Record I. & V. R. R. Co. Case, pp. 52 to 59.

In *Cooley on Taxation* (2d Ed.), at pages 363, 364, the following clear statement of the law, upon the point under consideration, is given:

"It is a *fundamental rule* that in judicial or *quasi*

judicial proceedings affecting the rights of the citizen, he *shall have notice and be given an opportunity to be heard, before any judgment, decree, order or demand shall be given and established against him.* Tax proceedings are not in the strict sense judicial, but they are *quasi* judicial, and as they have the *effect of a judgment*, the reasons which require notice of judicial proceedings are always present when the *conclusive steps are to be taken.* * * * We should say that notice of proceedings in such cases, and an opportunity of a hearing of some description, were *matters of constitutional right.* It has been customary to provide for them as part of what is 'due process of law' for these cases, and it is not to be assumed that constitutional provisions, carefully framed for the protection of property, were intended or could be construed to sanction legislation under which officers might *secretly assess* one for any amount in their discretion, *without giving him an opportunity to contest the justice of the assessment.* It has often been very pointedly and emphatically declared that it is contrary to the first principles of justice that one should be condemned unheard; and it has also been justly observed of taxing officers that 'it would be a dangerous precedent to hold that any absolute power resides in them to tax as they may choose, without giving any notice to the owner. It is a power liable to great abuse, and it might safely have been added, it is a power that, under such circumstances would be certain to be abused. The general principles of law applicable to such tribunals oppose the exercise of such power.' * * *

"It is not customary to provide that the taxpayer shall be heard *before* the assessment is made except when a list is called for from him, but a *hearing* is given

afterwards, either before the assessors themselves or before some court or board of review."

In this connection the Court is asked to remember that this law, not only fails to require the State Board to give to railway corporations any hearing, or opportunity to be heard, respecting the assessment and valuation of their "railroad track" and "rolling stock" but it gives the State Board power to arbitrarily deny any such hearing and to render any such hearing utterly impossible, *which was done in the case of these plaintiffs*, as has been hereinbefore shown from the records; *supra*, pp. 47 to 54.

In *1 Desty on Taxation*, Sec. 114, at page 601, it is said: "The proceedings being judicial, the law must provide some kind of notice and *opportunity to be heard before the proceedings become final*, or they will want the essential ingredient of due process of law."

In *Burroughs on Taxation*, Sec. 101, at page 237, the following statement is made with reference to the powers of boards of review: "While they have the power to correct the valuation of particular individuals on application, they cannot increase the valuation on the property of the taxpayer without notice to him. *He is entitled to be heard before the burden of taxation is increased.*"

IF THE LAW RESERVES TO THE TAXPAYER THE RIGHT TO CONTEST THE ASSESSMENT IN THE COURTS OF JUSTICE BEFORE THE TAX BECOMES A LIEN, NO NOTICE OR HEARING BEFORE THE ASSESSING BOARD IS ESSENTIAL.

The attention of the Court is now called to a class of decisions in which it seems, at first glance, to have been held that notice, and the right to be heard before the assessing authorities, are not essential, and that

valid assessments and valuations, for taxation, may be made under statutes which fail to secure to the taxpayer an opportunity to be heard.

These decisions are much relied upon by "our friends the enemy." A careful examination of these decisions will, however, demonstrate the fact that, instead of being in conflict, they are in exact harmony with the overwhelming current of authority in support of our proposition that *an opportunity to be heard must be secured by law to the taxpayer before the assessment and valuation of his property, for taxation, is made final and absolute, so as to become a lien upon his property.*

There is no denial of "*due process of law*," nor of "*the equal protection of the laws*," touching assessments and valuations of property for the purpose of taxation, *if there is secured and reserved, by law, to the owner of the property assessed, the right to contest the correctness and justness of the assessments and valuations, the validity of the taxes imposed, and the amounts charged upon his property, in the ordinary courts of justice of his State* BEFORE *the taxes so assessed become a final and absolute lien upon his property.*

In *Cooley on Taxation* (2d Ed.,) at page 51, Judge Cooley gives in a single sentence the key that unlocks all difficulty, and harmonizes all seeming conflict. His statement is as follows:

"It has been decided that the revenue laws of a State may be in harmony with the Fourteenth Amendment, though they do not provide for giving a party an opportunity to *be present* when the tax is assessed against him, *and to be then heard,* IF *they give him the right to be heard afterwards in a suit to enjoin the collection, in which both the validity of the tax and the amount of it may be contested.*"

The leading cases, falling under this clear definition of Judge Cooley, chiefly relied upon by our opponents, are *Kentucky Railroad Tax Cases*, 115 U. S., 321; *Hagar* v. *Reclamation District No. 108*, 111 U. S., 701; *Davidson* v. *New Orleans*, 96 U. S., 97. In each of these cases the statutes involved expressly provided that the assessments of taxes thereunder *should not be or become liens on the property assessed, or even obligations of the owner, except upon full trial in the State Courts, in which the taxpayer might have full and fair hearing.*

It was upon this ground that this Court sustained these assessments, and held that the statutes under which they were made were not in conflict with the Fourteenth Amendment. It is clear from the statements of these decisions that the statutes involved would have been held unconstitutional and void, but for the fact that *the assessments were not final; created no lien upon the property assessed; created no debt against the owner of the property assessed; and were subject to contest in a court where the taxpayer was assured a full hearing.*

In *Davidson* v. *New Orleans*, 96 U. S., 104, 105, it is said:

"Whenever, by the laws of a State, or by State authority, a tax, assessment, servitude, or other burden is imposed upon property for the public use, whether it be for the whole State or some more limited portion of the community, *and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice*, with such notice to the person, or such proceedings in regard to the property as is appropriate to the nature of the case, the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious

it may be to other objections. * * * It is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, *he has, by the laws of the State, a fair trial in a court of justice*, according to the methods of proceeding applicable to such a case. This was clearly stated by this Court, speaking by the Chief Justice, in *Kennard* v. *Morgan*, (92 U. S., 480), and, in substance, repeated at the present term, in *McMillan* v. *Anderson*, (95 id., 37).

"This proposition covers the present case. *Before the assessment could be collected or become effectual, the statute required that the tableau of assessments should be filed in the proper District Court of the State; that personal service of notice with reasonable time to object, should be served on all owners who were known and within reach of process*, and due advertisement made as to those who were unknown, or could not be found. This was complied with; and the party complaining here appeared, and had a full and fair hearing in the court of the first instance, and afterwards in the Supreme Court."

In *Hagar* v. *Reclamation District No. 108*, 111 U. S., 711, it is said:

"*The assessment under consideration could, by the law of California, be enforced only by legal proceedings, and in them any defense going either to its own validity or amount could be pleaded.*"

In *Kentucky Railroad Tax Cases*, 115 U. S., 335, 336, it is said:

"But whatever relief courts of justice may afford against the injuries apprehended, when in fact they have resulted, is secured to the plaintiffs in error by the very statute of which they complain. For the valuation

of railroad property under the act, and the assessment of the taxes thereon, *are not final, in the sense that they contitute a charge upon the property subject to the tax, or a liability fixed upon the corporation owning it.* That result can be attained, and the tax actually collected, *only by suit*, as provided in the fifth section of the statute, either against the officers of the companies for penalties incurred by a failure to pay the taxes levied, or for the recovery of the taxes themselves, by action in the Franklin Circuit Court, or in the courts having jurisdiction in the counties, for the taxes payable to them respectively. The case is thus brought directly and distinctly within the decision in *Davidson* v. *New Orleans*, 96 U. S., 97, 104, where it is held 'that, whenever by the laws of a State, or by State authority, a tax, assessment, servitude or other burden is imposed upon property for the public use, whether it be of the whole State, or of some more limited portion of the community, *and those laws provide for a mode of confirming or contesting the charge thus imposed, in the ordinary courts of justice, with such notice to the person, or such proceeding in regard to the property as is appropriate to the nature of the case,* the judgment in such proceedings cannot be said to deprive the owner of his property without due process of law, however obnoxious it may be to other objections.' And this is the principle that was followed in the subsequent case of *Hagar* v. *Reclamation District*, 111 U. S., 701. In that case, the statute of California, which conferred the jurisdiction, *authorized any defense going either to the validity or the amount of the taxes assessed, to be pleaded.*"

In many other States the statute provides for a proceeding in a court of competent jurisdiction, with

notice and an opportunity for a hearing, *before the assessment becomes absolutely final and conclusive.* It is manifest that in States making such statutory provision for a trial and full hearing in Court before the assessment becomes a fixed lien, the necessity for a hearing before the assessing officers,—who make, in fact, only a tentative, or primary assessment subject to contest in Court,—does not exist. It is evident that decisions of the Courts of States having such provisions of law for the protection of the taxpayer, are not at all applicable to the cases at bar.

The decision of the Indiana Supreme Court in *Hyland, Auditor*, v. *The Brazil Block Coal Co.*, 128 Ind., 335, may be claimed to be in conflict with the decision in *Kuntz* v. *Sumption, Treasurer, supra*, and with the reasoning and authorities herein above set forth. But a careful examination of that decision will show that there is no conflict; on the contrary, it is affirmatory of the decision in *Kuntz* v. *Sumption, supra*, and of our proposition now under discussion, to the effect that notice, *and the right to be heard*, must be provided by the statute in behalf of the taxpayer, *before* any *final* adjudication of the valuation and assessment of his property for taxation, is made.

That case did not involve the assessment and valuation, for taxation, of any *tangible property.* It only involved the assessment of the *capital stock* of the Coal Company, by the County Board of Equalization, its tangible property having been assessed by the assessor.

The length of session of the County Board was fifteen days. The law fixed the time and place of the meeting of the Board, *and required two weeks' publication of notice of such meeting.* The Court held that, upon

such notice, it was the duty of the Coal Company to *appear voluntarily* before that Board and *defend* the *primary* valuation and assessment it had itself made of its capital stock.

In that case no change of valuation and assessment of *tangible property* was made, or attempted. The question was not presented nor decided, whether the Coal Company had the *right to be heard* by the Board *after* a primary, and *before* a final valuation and assessment of the capital stock was made by the County Board of Equalization.

If the decision were to be construed as requiring the Coal Company to dance attendance upon the county board during its entire session, simply under the *hope* that the Board would, *as matter of grace*, give it a hearing; it would be in direct conflict with the decision in *Kuntz* v. *Sumption*, *supra*; as well as in conflict with reason, equity and law. But that no such construction was contemplated is shown by the following quotations from the decision:

"It cannot be doubted that some notice must be provided for by law, since there can be no due process of law where there is no notice. * * * It is manifest that neither the principle decided in *Kuntz* v. *Sumption*, *supra*, nor the line of reasoning there pursued, is relevant to the question here presented. As the statement furnished by the corporation presents the matter to the Board for action, and the corporation knows that the Board must act upon it, there is no valid reason for asserting that there was no notice."

The *right* of the Coal Company *to be present and to be fully heard at the time* its capital stock was assessed by the County Board, was not in question.

This decision cannot be harmonized with the decisions in *Garvin* v. *Daussman*, *supra*, *Kuntz* v. *Sumption*, *supra*, and the many other decisions of the Indiana Supreme Court herein above cited, on any other basis than that above indicated. The decision itself conclusively proves that it *affirms*, rather than overrules these other decisions.

In addition to the many authorities herein above cited and quoted, the following decisions will be found strongly in support of the proposition that "due process of law" *requires* that *the law* must give the taxpayer, as a *matter of right*, an *opportunity to be heard* touching the correctness and validity of the assessment and valuation of his property, for taxation, as agreed upon and intended, *before* such assessment and valuation is made final and absolute.

Hurtado v. *California*, 110 U. S., 535, 536.
Dent v. *West Virginia*, 129 U. S., 123, 124.
Williams v. *Supervisors of Albany*, 122 U. S., 163, 164, 165.
State v. *County of Dodge*, 20 Neb., 595.
State v. *Northern Belle, Etc., Co.*, 12 Neb., 89.
South Platte Land Co. v. *Buffalo County*, 7 Neb., 253.
Sioux City, Etc., R. R. Co. v. *Washington County*, 3 Neb., 30.
Patten v. *Green*, 13 Cal., 325, 329.
People v. *Reynolds*, 28 Cal., 111.
Los Angeles v. *Railroad Co.*, 49 Cal., 638.
Cleghorn v. *Postlewaite*, 43 Ill., 429.
Darling v. *Gunn*, 50 Ill., 424.
McConkley v. *Smith*, 73 Ill., 313.
National Bank v. *Cook*, 77 Ill., 622.

People v. *Ward*, 105 Ill., 620.
Philips v. *Stevens Point*, 25 Wis., 594.
Matheson v. *Mazominie*, 20 Wis., 191.
Griswold v. *School District*, 24 Mich., 262.
Butler v. *Supervisors of Saginaw County*, 26 Mich., 262.
Thomas v. *Gain*, 35 Mich., 155.
Whiteford Township v. *Probate Judge*, 53 Mich., 130.
Philips v. *Township of New Buffalo*, 63 Mich., 683.
Leavenworth County v. *Lang*, 8 Kan., 284.
Kansas Pacific R. R. Co. v. *Russell*, 8 Kan., 348.
Griffith v. *Watson*, 19 Kan., 23.
Relfe v. *Life Ins. Co.*, 11 Mo. Ap., 374.
Board of Equalization Cases, 49 Ark., 518.
Brown v. *City of Denver*, 7 Col., 305.
Griffin v. *Mixon*, 38 Miss., 424.
Clark v. *Mulford*, 43 N. J., 550.
State v. *Utter*, 33 N. J. L., 183.
City of Philadelphia v. *Miller*, 49 Penn. State, 440.
Ulman v. *Mayor of Baltimore*, 72 Md., 587.

THE ACT OF MARCH 6, 1891, DENIES TO THESE PLAINTIFFS IN ERROR DUE PROCESS OF LAW; AND THE PRETENDED ASSESSMENTS AND VALUATIONS OF THE PROPERTY OF THESE PLAINTIFFS, AS MADE BY THE STATE BOARD OF TAX COMMISSIONERS AT ITS SESSION IN THE YEAR 1891, ARE ILLEGAL AND VOID; BECAUSE SAID STATE BOARD OF TAX COMMISSIONERS, IN MAKING SAID ASSESSMENTS AND VALUATIONS,—UNDER PERMISSION, SANCTION AND REQUIREMENT OF SAID PRETENDED ACT,—TOOK INTO ACCOUNT, CONSIDERED, ESTIMATED, ASSESSED AND VALUED FOR TAXATION, FRANCHISES, CONTRACT RIGHTS,

PROPERTIES, TERMINALS AND BUSINESS FACILITIES OF THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF HEREIN, AND OF THE PENNSYLVANIA COMPANY, NOT WITHIN THE TERRITORIAL JURISDICTION OF INDIANA, AND NOT LAWFULLY SUBJECT TO TAXATION IN AND BY THE STATE OF INDIANA.

Argument is not needed to demonstrate that the enforcement of assessments for taxes upon property and values not within the jurisdiction of the Board making the assessments, would be the taking of property *without due process of law*, and, therefore, in violation of the Fourteenth Amendment to the constitution of the United States. That just that would be the result of upholding the assessments and valuations for taxation, of the property of these plaintiffs, here complained of, is clear even to the point of absolute demonstration; if the official record of the State Board of Tax Commissioners is true. This Court is earnestly asked to consider: *First.* Just what the State Board had the right and jurisdiction to assess and value for taxation, and, *Second.* Just what it *did include* in its pretended assessments and valuations of the property of these plaintiffs.

What property had the State Board jurisdiction to assess? Let the Act itself answer.

1. The statute gives to the State Board of Tax Commissioners jurisdiction to assess and value for taxation *just two items of the corporate property of these plaintiffs, and none other*, namely:—"*railroad track*" and "*rolling stock.*" *Act of March 6, 1891.* Sec. 137.

2. The statute clearly and minutely describes and defines the property covered by, and included under, the terms "railroad track" and "rolling stock."

Act of March 6, 1891. Secs. 78, 80.

3. The statute conclusively establishes the fact that there are *many other items* of the corporate property of these plaintiffs *not within the jurisdiction of the State Board of Tax Commissioners.*

Act of March 6, 1891. Secs. 81, 82, 83, 84.

4. Under this statute only *four classes* of the corporate property of these plaintiffs are subject to taxation, namely:—

(1.) "Railroad track" as defined and described by Section 78.

(2.) "Rolling stock" as defined and described by Sections 80, 83.

THESE TWO CLASSES ARE WITHIN THE JURISDICTION OF THE STATE BOARD OF TAX COMMISSIONERS, AND NO OTHER RAILWAY PROPERTY.

(3.) All real estate other than that denominated "railroad track," with all improvements thereon,—Section 82.

(4.) Personal property, machinery, fixtures, and stationary engines on the right of way, and not included in the property denominated "railroad track;" and all other personal property, as defined and described in Sections 81 and 78.

These two classes are not within the jurisdiction of the State Board of Tax Commissioners.

5. Among the items of corporate property of these plaintiffs *not within the jurisdiction of the State Board of Tax Commissioners*, and not subject to taxation under the Act of March 6, 1891, are the following items:

(1.) Their *franchises* for maintaining and operating their railways.

(2.) Their *leases*, *contracts* and *traffic agreements* with other corporations.

(3.) Their "*good will*" or *business as common carriers.*

(4.) Their *capital stock*, which covers and includes all their assets,—tangible and intangible.

(5.) And in the case of plaintiff, the P. C. C. & St. L. Ry. Co.,—which is a consolidated company,—the value of *its franchises in other States;* its *operating contracts, leases and traffic agreements with railways in other States;* its *terminals*, and *contracts regarding terminal facilities in other States;* the *stocks and bonds resting upon lines of railway situated in other States held and owned by it as a consolidated company.*

All of these items of corporate property are included in, and form part of the value the "*railroads*" of these plaintiffs. *But they are not included in the two items of the corporate property of these plaintiffs denominated "railroad track" and "rolling stock."*

6. It is a self-evident proposition that the term "railroad" includes far more, and other and different properties and values, than are included in the terms "railroad track" and "rolling stock." If this proposition were not self-evident the authorities establish it beyond reasonable controversy.

(1.) The statute under consideration proves conclusively that the Legislature did not intend to include all of the properties and values covered by the term "railroad," under the two terms "railroad track" and "rolling stock;" but, on the contrary, did intend to separate two carefully defined items of the tangible property of railway corporations from all other corporate property covered by the term "railroad," and submit these two items of tangible property,—*and none other*,—to the jurisdiction of the State Board of Tax

Commissioners for assessment and valuation at their "true cash value."

Act of March 6, 1891. Secs. 78, 80, 81, 82, 83, 84, 137.

(2.) Other statutes enacted by the Legislature of Indiana show that the Legislature well understood and recognized the term "railroad" as embracing and including *all* the properties and values belonging to railway corporations.

Revised Statutes of 1881. Secs. 3937, 3938, 3953.

Act of Dec. 21, 1858. Sec. 6, 1 Gavin and Hord, p. 86.

The Indiana Supreme Court has passed upon the meaning of "railroad."

"The Act of December 21st, 1858, (1 G. & H. 85), contemplated *taxing railroads*, including all property used in running and operating the same, as an entirety or unit."

I. C. & L. R. R. Co. v. *Kilner*, 69 Ind., 71, 74, 75, 81.

"A railroad company should be taxed, under the law as it now stands, for its "*road*" as an entirety, including all property in any way used by it in running or operating the road."

T. & W. R. R. Co. v. *Lafayette*, 22 Ind., 262, 269.

(3.) Touching the common and accepted meaning of the word "railroad," the following authorities are in point, viz:

The Century Dictionary, the highest authority on the meaning of words, under the title of "railway," to which the title "railroad" refers, contains this definition: "But in common and accepted usage the meaning of the terms *railway* and *railroad* has been extended

to include not only the permanent way, but everything necessary to its operation, as the rolling stock and buildings, including stations, warehouses, roundhouses, locomotive shops, car shops and repair shops, *and also all other property* of the operating company, as stocks, bonds, and other securities."

The following authorities are to the same effect:

State Railroad Tax Cases, 92 U. S., 605.
3 Woods' Railway Law, Sec. 474.
Jones on Railroad Securities, Secs. 124, 125, 131.
A. & P. R. R. Co. v. *Lesueur*, 37 A. & E. R. R., 369, 370.

7. The official certificate of the State Board of Tax Commissioners is final and conclusive as to its statements regarding what the Board did, and how it did it,—touching the matter of assessment and valuation of corporate property of railway corporations. No member of the Board can now subtract from, add to, contradict or explain away the statements found in this official certificate and record of the State Board of Tax Commissioners.

Cooley on Taxation, (1st Ed.), pp. 193, 194, 195, 289, 290, 562.
Van Rensselaer v. *Witbeck*, 7 N. Y., 517.
Westfall v. *Preston*, 49 N. Y., 349.
The People ex rel. v. *Forest, et al.*, 96 N. Y., 548, 549.
Clark v. *Crane*, 5 Mich., 153, 154, 155.
Hogelskamp v. *Weeks*, 37 Mich., 426, 427, 428.
Dickson v. *Reynolds*, 48 Mich., 162, 163.
Johnson v. *Goodridge*, 15 Maine, 31.
State Auditor v. *Jackson County*, 65 Ala., 142.

Words are to be taken according to their natural, common and ordinary signification.

Sedgwick on Construction of Statutory and Constitutional Law, (1st Ed.), pp. 227, 244, 245, 246, 247.

Lieber's Hermeneutics, p. 144.

E. & C. R. R. Co. v. *Meeds*, 11 Ind., 274.

Beard v. *Lofton*, 102 Ind., 411.

Stout v. *Board of Commissioners of Grant Co.*, 107 Ind., 347.

Plumer v. *Supervisors*, 46 Wis., 163.

Scheiber v. *Kachler*, 49 Wis., 291.

8. The certificate of the State Board of Tax Commissioners, as set forth in its official report, is as follows:

"Making liberal allowances for all proper deductions, the State Board of Tax Commissioners *has fixed the values of the respective* RAILROADS *and parts of* ROADS within the State of Indiana *for taxation* on the first day of April, 1891, as hereinbefore set forth.

"In arriving at the basis for the estimate of *said values*, the Board has considered the cost of the construction and equipment of said *roads*, the market value of the *stocks* and *bonds*, and the gross and net *earnings* of each of said *roads*, and *all other matters appertaining thereto* that would assist the Board in arriving at a true cash value of *the same*," *i. e.*, *railroads*.

Record P. C. C. & St. L. Ry. Co. Case, p. 110.

Record I. & V. R. R. Co. Case, p. 50.

This certificate conclusively establishes three points viz:

(1.) The values fixed, agreed upon and returned by the State Board of Tax Commissioners were the

"*values of the respective railroads and parts of roads*," —instead of values of "railroad track" and "rolling stock."

(2.) The values fixed, agreed upon and returned by the State Board of Tax Commissioners,—being "the values of the respective *railroads* and parts of *roads*,"—*must of necessity include other property and values besides "railroad track" and "rolling stock."*

(3.) This certificate proves beyond question that the State Board of Tax Commissioners *did not assess* "railroad track" and "rolling stock" *at its true cash value;* but assessed "RAILROADS AND PARTS OF ROADS" *for taxation.*

It is perfectly evident from this official statement that the State Board did *not* limit its assessments and valuations to the true cash value of "railroad track" and "rolling stock;" but that it *did* assess and value for taxation *other properties and values*, in addition to assessing and valuing "railroad track" and "rolling stock."

No one can read the testimony of Hon. Claude Matthews,—a member of the State Board,—which is quoted *supra*, pp. 14, 15 and 63, and fail to *know* that the assessment and valuation made against the I. & V. R. R. Co., *is not an assessment and valuation of the "railroad track" and "rolling stock" of that company;* BUT IS A MIXED, MINGLED AND COMBINED ASSESSMENT OF THE VALUES OF THE FRANCHISES, FACILITIES, PROPERTIES, BUSINESS ABILITY AND EARNING CAPACITY OF THE PENNSYLVANIA COMPANY, *and the "railroad" of the Indianapolis and Vincennes Railroad Company.*

Precisely the same method,—the same exercise of excessive jurisdiction,—the same system of importation

and fictitious imputation of values for the purpose of taxation, occurred in the assessment and valuation of the "railroad" of the P. C. C. & St. L. Ry. Co.

It is for exactly this wrongful and unconstitutional purpose that the schedules defined in Sections 83 and 85 of the law are required.

The facts regarding the assessments and valuations of the property of these plaintiffs as made by the State Board, and the methods applied in making them, have been presented and discussed, *supra*, pp. 6 to 17; 51 to 53; 55 to 69.

The purpose here is to apply the law to these mingled and combined assessments of property *within* and *without* the jurisdiction of the State Board of Tax Commissioners; and establish by authority that these entire assessments are unlawful, unconstitutional and void, for the reason that they are the result of the exercise of excessive jurisdiction.

The decisions of this Court settle this question definitely, and beyond controversy.

In *Santa Clara County* v. *Southern Pacific Railroad Co.*, 118 U. S., 395, this Court held as follows:

"An assessment of a tax is invalid, and will not support an action for the recovery of the tax, if, being laid upon different kinds of property as a unit, it includes property not legally assessable, and if the part of the tax assessed upon the latter property cannot be separated from other parts of it."

This was held in a case in which the State Board of Equalization of California had included the *fences* built along the track, in their assessment made under a clause of the State Constitution giving the State Board of Equalization jurisdiction to assess: "*The franchise*,

roadway, roadbed, rails and rolling stock of all railroads operated in more than one county."

In announcing the decision of the Court, Mr. Justice Harlan, at page 416, said:

"The case as presented to the Court below, was, therefore, one in which the plaintiff sought judgment for an entire tax arising upon an assessment of different kinds of property as a unit,—such assessment including property not legally assessable by the State Board, and the part of the tax assessed against the latter property not being separable from the other part. Upon such an issue, the law, we think, is for the defendant; an assessment of that kind *is invalid* and will not support an action for the recovery of the entire tax so levied. Cooley on Taxation, 295–6, and authorities there cited; *Libby* v. *Burnham*, 15 Mass., 144, 147; *State Randolph, etc.*, v. *City of Plainfield*, 38 N. J. Law, (9 Vroom), 93; *Gamble* v. *Witty*, 55 Mississippi, 26, 35; *Stone* v. *Bean*, 15 Gray, 42, 45; *Moshier* v. *Robie*, 11 Maine, (2 Fairfield), 137; *Johnson* v. *Colburn*, 36 Vt., 695; *Wells* v. *Burbank*, 17 N. H., 393, 412.

"It results that the Court below might have given judgment in each case for the defendant upon the ground that the assessment which was the foundation of the action, included property of material value, which the State Board *was without jurisdiction to assess*, and the tax levied upon which cannot, from the record, be separated from that imposed upon other property embraced in the same assessment."

The decision in *California* v. *Central Pacific Railroad Co.*, 127 U. S., 1, is also precisely in point here. The syllabus touching this point is as follows:

"By the Constitution of California two modes of

assessment for taxation are prescribed, one by a State Board of Equalization; the other by county boards and local assessors. All property is directed to be assessed in the county, city, etc., in which it is situated, except that the franchise, roadway, roadbed, rails and rolling stock of any railroad operated in more than one county, are to be assessed by the State Board, and apportioned to the several counties, etc. By an act of the legislature the State Board is required to include in their assessment steamers engaged in transporting passengers and freights across waters which divide a railroad. This act was held by the Supreme Court of California, in *San Francisco* v. *Central Pacific Railroad Co.*, 63 Cal., 469, to be contrary to the constitution, and steamboats were held to be assessable by the County Board and not by the State Board. This Court, following that decision and that of *Santa Clara County* v. *Southern Pacific Railroad Co.*, 118 U. S., 394, *holds* that the assessment of the steamers of a railroad company by the State Board is in violation of the constitution of California, and void; and, being inseparably blended with the other property assessed, makes the whole assessment void."

In this case it was held that steam ferry boats for the ferriage of cars across a body of water dividing the railroad track and right of way, do not constitute part of the "*roadway*" or "*roadbed*" of the railroad, although *the railroad track is laid down on the ferry boats just as it would be on a bridge.* The locomotive and cars run onto the boat, and when the boat reaches the opposite shore, run off from the boat just as they would run onto and off from a bridge.

This holding of the Supreme Court followed the decision of the Supreme Court of California in *San*

Francisco v. *Central Pacific Railroad Company*, 63 Cal., 467, 469.

In announcing the decision of this Court Mr. Justice Bradley, touching the validity of the assessment, said:

"The last section shows explicitly that, in regard to a railroad, the State Board has power to assess only five things, the franchise, roadway, roadbed, rails and rolling stock; the County Boards are authorized to assess all the rest of the property. If the State Board includes in its assessment any more of the railroad property than it is authorized to do, the assessment will be *pro tanto* illegal and void. If the unlawful part can be separated from that which is lawful, the former may be declared void and the latter may stand; but if the different parts, lawful and unlawful, are blended together in one indivisible assessment, *it makes the entire assessment illegal.* This is so well settled that it needs no citation of authorities farther than to refer to the opinion of this Court in the former cases: (118 U. S.) In the present assessments, all parts of the property are blended together and are inseparable. If it be true, therefore, that property not authorized to be included in the assessments is included therein, *the assessments must be declared void.* * * * The question whether steamers and ferry boats should be included in the property assessed by the State Board of Equalization, or in that assessed by the County Board, was distinctly raised in the case of *San Francisco* v. *Central Pacific Railroad Company*, 63 Cal. 467, 469, and decided in favor of the County Board. That was an action brought by the city and county of San Francisco against the company to recover taxes imposed upon it by virtue of an assessment made by the County Board upon the same ferry boats

now assessed by the State Board. The company resisted the tax on the ground that these boats were assessable by the State Board, and not by the County Board. The Supreme Court of California decided against the company. Its finding of facts was as follows, namely: 'That the defendant is a corporation existing under the *laws of the United States, and of this State*, * * * owner of a line of railroad known as the Central Pacific Railroad, extending from a point in the city of San Francisco * * * to Ogden in the Territory of Utah; that the length of said road in the city and county of San Francisco is four miles from a point within said city to the eastern shore of the southern arm of the Bay of San Francisco; that from said point on the eastern shore * * * to a point on the western shore of said bay, where the railway of defendant again commences, is about twelve miles; that across said bay no line of railroad has been constructed; and freight and passengers carried upon said road are taken across said bay upon steamer ferry boats; * * * that upon the decks of said vessels are laid railroad tracks, etc.' After giving judgment for the plaintiff upon these facts, the Court says: 'We are of opinion that the assessment of the steamers above mentioned pertained to the local assessor, and was properly made by the assessor of the city and county of San Francisco.' This decision was made in June, 1883, and is a construction of the constitution of California. It follows that the Act of March 9th, 1883, as reproduced in Sec. 3665 of the Political Code, departs from the constitutional provision; and that the assessments in following the act, are also unconstitutional and void.

"In No. 1157, one of the cases against the Central

Pacific Railroad Company, being for the taxes of the year 1884, the Court finds that the State Board of Equalization, in making the assessment, did knowingly and designedly include in the valuation of the roadway, the value of fences erected upon the line between said roadway and the land of coterminous proprietors. This brings that case precisely within the decision made in the former cases reported in 118th United States Reports."

These decisions last cited and quoted, and many others that might be cited,—besides proving that the including of items of property not within their jurisdiction, by assessing officers in making an *aggregate, unit assessment*, renders the *entire assessment void*,—also establish another point beyond controversy, namely: *that corporate franchises granted to railroad corporations by State legislatures are items of personal property, susceptible of valuation, assessment and taxation separate and apart from all other property.*

In fact, no authority on this point can be needed, because the Act of March 6, 1891, expressly provides for the assessment and taxation of *corporate franchises as separate and distinct items of personal property.*

Section 25.

It cannot be disputed that the State Board of Tax Commissioners *had no jurisdiction* to assess and value, for taxation, the corporate franchises of these plaintiff railway corporations. Hence, *if the State Board did take into account the corporate franchises in making these assessments and valuations, they are unquestionably invalid and void.*

The certificate of the State Board of Tax Commissioners, already quoted, proves conclusively that, in

making these assessments and valuations, *the capital stock*,—which represents among other things, *the corporate franchises*,—the *bonded debt*, and the *gross and net earnings* of *the entire line of railway owned or leased by each of these plaintiffs*,—*whether situated in Indiana, or in other States*, — *were taken into account, and their amount and value were considered in making these assessments and valuations.* The schedules required of these plaintiffs furnish still further proof establishing this fact beyond any question. These illegal and unconstitutional requirements are found in Sections 80, 83, 85, 86 and 120 of the Act of March 6, 1891. It cannot be disputed that the State Board of Tax Commissioners, in making these assessments and valuations, for taxation, *did consider and take into account as an element of value, the corporate franchises of the P. C. C. & St. L. Ry. Co. and the Pennsylvania Company as consolidated, or interstate railway corporations.* And just that is what the State Board of Tax Commissioners had no legal or constitutional right or power to do.

The Indiana Legislature and the State Board of Tax Commissioners, and the learned counsel who are now trying to uphold this law, all seem to have entirely lost sight of the fact *that the corporate franchises of these railway companies are State grants, and are respectively limited to the territorial jurisdiction of the State granting the franchise.*

The *corporate franchise* of a railway company owning a line of railway situated in Indiana, *ends at the boundary line of Indiana as to the railway situated in Indiana;* no matter how many lines of railway that *same company* may own *in other States.* A consolidated, or interstate railway company may own or operate lines of

railway crossing, or extending into, several States; *but there is no such thing as a consolidated, interstate, railway company corporate franchise.*

Each State grants the corporate franchises under which every railway within its boundaries is constructed, operated and controlled. For example: The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company,—one of these plaintiffs,—owns and operates a line of railway extending from Pittsburgh, Penn., through the States of West Virginia, Ohio and Indiana, to the City of Chicago, in Illinois, with many different lines and branches in Ohio and Indiana; thus it is a company owning and operating lines of railway in five different States, but it does not own and operate this railway in the five States under one single corporate franchise. *It possesses five distinct and separate corporate franchises granted by the five States respectively.*

The part of its railway and property situated in Illinois is owned, operated and controlled under the corporate franchise granted by the State of Illinois. *That Illinois railway,—all of its tracks, its terminals, its property and its corporate franchises, are subject to taxation in Illinois and can not by any constitutional law be made subject to taxation in Indiana.* So all of its railway and property situated in Pennsylvania, West Virginia and Ohio is owned, operated and controlled under the corporate franchises granted by the States of Pennsylvania West Virginia and Ohio, respectively. All of its railway, its tracks, its terminals, its property of every description situated in Pennsylvania, West Virginia and Ohio, respectively, and its corporate franchises granted by the States of Pennsylvania, West Virginia and Ohio, respectively, are subject to taxation in and by

the States of Pennsylvania, West Virginia and Ohio, respectively, and can not, constitutionally or lawfully *either directly or indirectly*, be subjected to taxation by the State of Indiana. It follows, of necessity, that the only *corporate franchise* of this company that could be subjected to taxation in Indiana,—even if the law had permitted the taxation of its corporate franchise, which it has NOT done, would be *the corporate franchise granted by Indiana, and strictly limited to the railway situated within the boundary lines of Indiana.* It is, therefore, too plain for reasonable controversy that, viewed from any standpoint, these assessments and valuations are invalid and void: *First:* Because the State Board of Tax Commissioners *imported values belonging solely to the tangible property of the P. C. C. & St. L. Ry. Co. and the Pennsylvania Company, situated in other States and fully taxed in said other States; and arbitrarily and fictitiously spread said imported values over and assigned them to, the lines of railway of these plaintiffs situated in Indiana*, and *Second:* Because said State Board of Tax Commissioners in making said assessments and valuations, *took into account, and considered as an element of value of the "railroad track" and "rolling stock" of these plaintiffs, situated in Indiana, all of the corporate rights and franchises, granted to the P. C. C. & St. L. Ry. Co. and the Pennsylvania Company, by the States of Ohio, West Virginia, Illinois and Pennsylvania, as well as by the State of Indiana.* All of which was and is, without right, without authority of law, and unconstitutional.

That the position above taken touching *corporate franchises*, and the territorial limitations thereof, is correct, is established by authority that can not be questioned.

Railway Company v. *Whitton*, 13 Wall., (U. S.,) 283, 284.

Ohio and Mississippi Railroad Co. v. *Wheeler*, 1 Black, (U. S.,) 297.

Muller v. *Dows*, 94 U. S., 447, 448.

The Pennsylvania Railroad Company v. *The St. Louis, Alton and Terre Haute Railroad Company*, 118 U. S., 295, 296.

Canada Southern Railroad Company v. *Gebhard*, 109 U. S., 527.

Nashua Railroad v. *Lowell Railroad*, 136 U. S., 375 to 381.

Racine and Mississippi Railroad Co. v. *Farmers' Loan and Trust Co.*, 49 Ill., 331.

Quincy Railroad Bridge Co. v. *Adams Co.*, 58 Ill., 615, 619.

Chicago and Northwestern Railroad Co. v. *The Auditor General*, 53 Mich., 79.

In *California* v. *Pacific Railroad Co.*, 127 U. S., 1, 40, 41, it is settled that a State cannot tax *foreign franchises*, granted by the United States, or by other States. The syllabus touching this point is all that need be quoted. It is as follows:

"The State Board of Equalization of California having included in their assessment all the franchises of a railroad company, amongst which were franchises conferred by the United States, of constructing a railroad from the Pacific Ocean across the State as well as across the Territories of the United States and of taking toll thereon; *held*, that the assessment of these franchises was repugnant to the constitution and laws of the United States and the power given to Congress to regulate commerce among the several States.

"Franchises conferred by Congress, cannot, without its permission, be taxed by the States.

"Congress has authority, in the the exercise of its power to regulate commerce among the several States, to construct, or authorize individuals or corporations to construct, railroads across the States and Territories of the United States."

In the opinion at pages 40 and 41, Mr. Justice Bradley elaborated these points and cited numerous authorities in their support.

The decision in *The Chicago and Northwestern Railroad Company* v. *The Auditor General*, 53 Mich., 79 to 93, rendered by Chief Justice Cooley is precisely in point, not only on the point that there can be no such thing as a *joint* or *interstate corporate franchise*, but also on the point that the *gross earnings of an entire interstate consolidated company, cannot, for the purpose of taxation, be prorated and apportioned upon the mileage of the entire line.*

The important parts of the syllabus are as follows:

"The General Railroad Law of Michigan made roads that lay partly within and partly without the State, taxable on so much of their gross receipts as correspond to the ratio of their local to their entire length. A local company was consolidated with a foreign one that controlled a number of other consolidated roads and several leased lines besides, but the corporation reported its receipts in gross, without discriminating between its own roads and those that were leased, and was assessed accordingly, as if it constituted a single line. *Held* (1) that it was not estopped by its report from disputing the legality of the assessment; the proper course was for the Commissioner of Railroads to require more definite

information from it as a basis of assessment; (2) *the foreign corporation was not taxable upon its entire system, but only upon the Michigan road which had been consolidated therewith.*

"Before the Michigan Tax Law of 1882 was adopted railroad companies that had been organized under the State laws and whose roads lay wholly within or partly without the State, were taxable upon a basis fixed for Michigan roads by the General Railroad Law of 1873. And roads were permitted to consolidate with one another. *Held*, however, that if the company with which consolidation had been effected was a foreign one the consolidated company could not be taxed as if its road constituted a single line that ran partly without the State, but derived its powers from the State law."

I quote from the opinion extracts found on pages 85, 87, 88, 91 and 92, as follows:

"The contention on the part of the State is that after a company formed in this State under the general laws has been consolidated with a company formed in another State or in two or more other States, it is thereafter to be deemed and considered a company 'formed under' the general laws, and its road a railroad which 'lies partly within and partly without this State,' within the meaning of the General Railroad Law, and that, therefore, the consolidated company must pay in this State a tax determined by the proportion of the operated road within the State to the whole length of the operated portion thereof. And it is in reliance upon this construction of the law, and this understanding of the light in which the road is to be regarded, that this tax is said to have been assessed. * * *

"The complainant, as has been stated, has been

consolidated with one railroad company organized under the laws of Michigan, and it also operates the road of another company organized under its laws with which it has not been consolidated. The Act of 1873 provides that every company formed under its provisions shall be assessed for taxation on the basis therein prescribed, and it further provides that the pre-existing companies formed under general laws, shall be deemed and taken to be organized under that Act. The Michigan companies are therefore beyond dispute taxable under the Act of 1873, and the only question that can arise concerns the one that has become consolidated with the complainant. That question is whether the complainant since the consolidation is to be considered a 'company formed under the provisions' of the statute of Michigan, 'whose road lies partly within and partly without the State,' so as to be taxed in respect to the gross earnings of the whole consolidated company in the proportion which the mileage in Michigan bears to the whole mileage. * * *

"We appreciate very fully the difficulty of determining under all circumstances in what light we are to regard the anomalous organizations which are formed by the consolidation of two or more corporations which have received their corporate powers from different sovereignties. * * *

"It may well happen, as indeed it often has, that the consolidated company will be a corporation possessing in one State very different rights, powers, privileges and immunities to those possessed in another, and subject to very different liabilities. *Delaware Railroad Tax*, 18 Wall., 206, 228; *Lake Shore, &c., Ry. Co.* v. *People*, 46 Mich., 193. And after the consolidation each

State legislates in respect to the road within its own limits, and which was constructed under its grant of corporate power, the same as it did before. *Pike* v. *C. N. W. Ry. Co.*, 94 U. S., 164. And it cannot follow the new organization with its legislation into another State. *Chicago & N. W. Ry. Co.* v. *Whitton*, 13 Wall., 283. It has been said that the consolidated company exists in each State under the laws of that State alone; *Muller* v. *Dows*, 94 U. S., 444, 447; and this is the effect of the decision in *Delaware Railroad Tax*, 18 Wall., 206, and in many other cases. * * *

"It follows that the Michigan corporation, which has been consolidated with the complainant, is alone of the consolidated organizations to be considered a company formed under the laws of Michigan, and it should have been taxed on the basis on which it was taxed from 1873 to 1878."

In view of the facts disclosed by the records in these cases; the analysis of the law; and the authorities quoted and cited, these plaintiffs insist that,—as to the assessment and valuation, for taxation, of their "railroad track" and "rolling stock,"—this law denies to them "due process of law," because:

1. It does not require any hearing, or opportunity to be heard, for the correction of errors, or for the reduction of oppressive and wrongful valuations, to be given them, *after* the State Board has agreed upon its intended assessments and valuations, and *before* its agreed and intended assessments and valuations are made final and absolute:

It does not require any notice or information of the amount and character of the assessments and valuations of their property agreed upon and intended to be

made by the State Board, to be given to them at any time prior to the final adjournment of said State Board:

It does not require said State Board to grant to them any hearing, or opportunity to be heard, at any time, either with or without notice of the assessments and valuations of their property agreed upon and intended to be made by said State Board.

2. It gives to the State Board of Tax Commissioners arbitrary power to deny to these plaintiffs any hearing, or opportunity to be heard, for the correction of errors, or the redress of wrongs, and to render any such hearing utterly impossible;—which arbitrary power was exercised by said State Board against these plaintiffs in error in the cases at bar.

3. It gives to the State Board of Tax Commissioners power to assess and value, for taxation in Indiana, the property, franchises, facilities, business ability, and earning capacity of the P. C. C. & St. L. Ry. Co., and the Pennsylvania Company, not within the territorial jurisdiction of Indiana, and not lawfully and constitutionally subject to taxation in Indiana;—which unlawful and unconstitutional power has been exercised by said State Board in making the pretended assessments and valuations of the property of these plaintiffs, involved in these cases.

II.

THE ACT OF MARCH 6, 1891, DENIES THE EQUAL PROTECTION OF THE LAWS TO THESE PLAINTIFFS—TOUCHING THE ASSESSMENT AND VALUATION, FOR TAXATION, OF THEIR "RAILROAD TRACK" AND "ROLLING STOCK"—IN THAT:

1. *It is a* SPECIAL LAW, *separating, distinguishing and* CLASSIFYING *the corporate property of railway corporations into*

separate and distinct CLASSES, *for the express purpose of permitting and requiring discriminating, unequal and ununiform taxation of "railroad track" and "rolling stock"—as compared with the taxation of all other property.*

2. *It permits and, in effect, requires different* RULES, METHODS *and* MEASURES *of* VALUE, *and the consideration of other and different* ELEMENTS *of supposed value, to be applied in the valuation, for taxation, of "railroad track" and "rolling stock," from those applied in the valuation, for taxation, of all other property; this discrimination resulting in the valuation and taxation of "railroad track" and "rolling stock" at an* UNEQUAL, UNJUST AND UNUNIFORM RATE—*as compared with all other taxable property.*

3. *It requires the taxation, in Indiana, of a very large part of the "rolling stock" and equipment of the P. C. C. & St. L. Ry Co., which is never used in Indiana, or in connection with the business done by said plaintiff over and upon its lines in Indiana; which is solely and exclusively used in States other than Indiana; and which is already fully taxed in such other States. It also requires all leased "rolling stock" to be assessed and taxed as the property of the lessee railway company, notwithstanding the fact that it has been once taxed as the property of its owner.*

4. *It permits and, in effect, requires the assessment and taxation, in Indiana, of a large portion of the value of terminals, terminal facilities, yards, stations, special urban and suburban lines of railway and other railway property, owned by the P. C. C. & St. L. Ry. Co.,* SITUATED IN OTHER STATES *and duly and lawfully taxed in other States.*

5. *It denies to these plaintiffs,—as to the assessment and valuation, for taxation, of their "railroad track" and "rolling stock,"—the jurisdiction of the local assessing officers; and deprives plaintiffs,—as to their said property,—*

of the rights of appeal to county boards of review, and from said county boards to the State Board of Tax Commissioners, whereby they would be assured a hearing before the assessment of their property could be made final and absolute,—which jurisdiction and rights of appeal, are granted to the owners of all other property subject to taxation.

The discussion of this proposition involves the following constitutional provisions, namely:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

U. S. Constitution, Fourteenth Amendment, Sec. 1.

"The General Assembly shall provide, by law, for *a uniform and equal rate of assessment and taxation;* and shall prescribe such regulations as *shall secure a just valuation for taxation of all property, both real and personal.*"

Indiana State Constitution, Art. 10, Sec. 1.

"The General Assembly shall not pass local or *special laws* in any of the following enumerated cases, that is to say: * * *

"For the assessment and collection of taxes for State, county, township or road purposes."

Indiana State Constitution, Art. 4, Sec. 22,

These constitutional provisions impose strict limitations and prohibitions upon *legislative power.*

They include the power to take property by taxation.

They include the entire process of taxation,—the *assessment*, the *valuation*, the *method* of assessment and valuation, the *elements of value* to be considered, and the *rate* of taxes assessed.

They prohibit *discriminating and partial legislation* in favor of any person or class, or against any other person or class.

They prohibit *classification of either persons or property*, whenever such classification results in denying to one class the equal protection of the laws, or in taking from one class rights, privileges or immunities granted to all other persons.

They prohibit,—in Indiana,—any *special law* for the assessment and collection of taxes; and require that *all taxation* shall be based upon a "*uniform and equal rate of assessment*," levied, *equally* upon a "*just valuation for taxation of all property both real and personal.*"

They prohibit any attempt, either directly or indirectly, to assess for taxation *properties, values and franchises* of these plaintiffs, and other railway corporations *situated in other States.*

In *Yick Wo* v. *Hopkins*, 118 U. S., 369, this Court said: "*The equal protection of the laws is a pledge of the protection of* EQUAL LAWS."

Some points in this controversy are *fixed facts*, which cannot be disputed or evaded.

First. It is a fixed fact that this law *separates* "*railroad track*" *and* "*rolling stock*" *from all other property*, and, for the purpose of assessment and valuation, for taxation, *puts these two items* of the property of railroad corporations *in a class by themselves.*

Second. It is a fixed fact that this law *requires* the assessment and valuation, for taxation, of "railroad track" and "rolling stock" to be made upon a *different basis*, by *different and discriminating methods*, and upon consideration of entirely *separate, distinct and different elements of supposed value;* from those used and applied

in the assessment and valuation, for taxation, of all other property.

Third. It is a fixed fact that this law *denies* to the owners of "railroad track" and "rolling stock,"—as to the assessment and valuation thereof,—certain *rights*, *privileges* and *protections* granted to the owners of all other property subject to taxation.

If these fixed facts do not prove this to be a *special law* for the taxation of "railroad track" and "rolling stock," what is it?

If it is not *discriminating class legislation*, what is it?

This *classification* of their property for taxation and *discrimination* against railway corporations is effected by express requirements of this law.

Sections 77 to 85, inclusive; 114, 129, 137.

The methods of *classification* and *discrimination* required; and the resulting *inequality of taxation*, have already been presented and discussed; *Supra* pp. 6 to 17; 35 to 41; 47 to 49; 54 to 71.

The purpose here is to establish, by leading, unquestioned and approved authorities, the proposition that this *classification*, *discrimination*, *special legislation*, and resulting *inequality of taxation*, render those provisions of this law providing for the assessment and valuation, for taxation, of the two classes of the property of railway corporations denominated "railroad track" and "rolling stock" *invalid*, and in conflict with the Fourteenth Amendment to the United States constitution, as well as with express provisions of the constitution of Indiana; because they deny to these plaintiffs, and all other railway corporations, "*the equal protection of the laws.*"

That these provisions of the Act of March 6, 1891,

constitute a *special law for the assessment and collection of taxes* upon the two classes of railway property denominated "railroad track" and "rolling stock," cannot be denied. Neither can it be denied that it is the express purpose of these provisions of the law to procure a *higher assessment and valuation* of "railroad track" and "rolling stock" for taxation, than could be procured by the application of *the same methods, rules, measurements and elements of valuation* applied in the assessment of all other property.

It is plain that this *higher assessment*, so procured by this special and discriminating legislation, results in *higher taxation* of "railroad track" and "rolling stock" than it could be made to bear *without this special and discriminating legislation.*

In a word, the exact purpose of this law is to make *one law* for the taxation of "railroad track" and "rolling stock" and *another law* for the taxation of all other property.

The word "assessment" means "valuation of property for taxation." The constitution of Indiana *requires* a "*uniform and equal rate of assessment and taxation.*" That is, a uniform and equal *rate of valuation*, because an ununiform and unequal rate of *valuation* must of necessity produce ununiform and unequal *taxation.* Different methods, measures, rules or elements can be applied to *one class* of property, separate and apart from all other property, but for one purpose, namely: to procure upon that one class a *higher rate of assessment, i. e.*, a *higher relative valuation*, and, consequently, a *higher taxation.* All property possesses an *inherent, intrinsic value*, it may be very small or very great, but it is *its* value, separate, apart from and wholly disconnected

with, *any attribute, quality, ability, characteristic or supposed capacity of its owner or possessor.* It is just *that value* that is lawfully and constitutionally subject to taxation.

This true taxable value of any piece of property is composed of the combined values of its raw material; the character and quality of that raw material; if constructed and manufactured, the character and quality of the materials used, and the workmanship of its construction; its condition,—respecting preservation and repair, or decay and waste; its location and surroundings; and its adaptation to the use for which it was intended.

These are the inherent, intrinsic elements of value of all property, real and personal. They belong, alike—in varying degrees—to all property, and constitute its true cash value—its entire taxable value. It is perfectly evident that *one uniform method, rule and measure of valuation* will reach all property alike, and will apportion the burden of taxation with exact equality, impartiality and equity, under the above definition.

Under this definition no *classification*, no *special law* for the assessment of *one class* of property, is needed or permitted. And this is exactly the kind of valuation and assessment for taxation *required* by the constitution of Indiana; any other kind is expressly *prohibited*. It will be observed that the above definition of true cash value, or genuine taxable value, which is the same thing, *limits the assessment to the elements of value inherent in the property assessed;* and this is right; any departure from this *limitation* opens wide the door for fictitious, discriminating, partial, unequal and fraudulent assessments.

Under this definition, and its limitations, in the assessment of any piece, or aggregate parcel, of property, any and all consideration of the *personal attributes, qualities, abilities, characteristics and capacities of the owner, occupant or user of the property to be assessed, is strictly eliminated:* so also, any and all consideration of *all other property*,—whether of like kind and character with that to be assessed, or of different kind,—*owned, occupied or used by the owner, occupant or user of the property to be assessed*, IS STRICTLY ELIMINATED; and this is right. It is a self-evident fact that the moment the assessing officers, in making assessment of a piece or an aggregate parcel of property, take into consideration,—as adding taxable value to the property to be assessed,—the *personal attributes and qualities, the pecuniary ability, the business capacity and reputation of the owner, occupant* or *user* of the property to be assessed; or take into consideration the fact that the owner, occupant or user of the property to be assessed owns, occupies or uses, *outside of and beyond the jurisdiction of the assessing officers, other property of like kind and character* with that they are to assess; that moment the assessment *ceases to be an assessment* of THE PIECE OR AGGREGATE PARCEL OF PROPERTY it is their duty to assess; and becomes a mingled and combined assessment of *that property* PLUS *fictitious, speculative and imaginary values arbitrarily imputed and assigned to it*, DRAWN FROM THE PERSONAL QUALITIES AND ABILITIES, AND FROM THE OTHER PROPERTY OF ITS OWNER, OCCUPANT OR USER.

Just that is the chief vice of this law. Just that is what has been done by the State Board of Tax Commissioners in making the pretended assessments and valuations of the "railroads" of these plaintiffs.

These records establish the following facts beyond cavil or controversy, viz.:

1. That the P. C. C. & St. L. Ry. Co. owns and operates special urban and suburban lines of railway, special ore, coal and mineral lines of railway, and superior terminals and terminal facilities, in the States of Illinois, Ohio and Pennsylvania, of vast value.

Record P. C. C. & St. L. Ry. Co. Case, pp. 140 to 145.

2. That the operation of these special lines of railway,—separate and distinct from its main interstate lines,—must of necessity require a large amount of "rolling stock" and equipment for the use of said special lines of railway, is a self-evident fact.

3. That large portions of its railway *outside* of Indiana are worth five times as much per mile as any part of its railway *within* Indiana is worth per mile.

Record P. C. C. & St. L. Ry. Co. Case, pp. 139 to 143, 109.

Computations based on the testimony in the record show an average mile *within* Indiana to be worth only $13,200.00; while computations based on the offered testimony of Mr. Brooks show the value of an average mile *outside* of Indiana to be $29,500.00; that is, the value of an average mile *in Indiana* is less than *one-half* the value of an average mile *outside* of Indiana; and yet this pretended assessment *in Indiana* is *$35,014.00* per mile.

4. That the *498.45* miles of its railway *outside* of Indiana earns *62.66* per cent. of its entire gross earnings, while the *647.42* miles of its railway *within* Indiana only earns *37.34* per cent. of its entire gross earnings.

Record P. C. C. & St. L. Ry. Co. Case, pp. 146, 147.

5. That it does not own or operate any special

urban or suburban lines of railway, or any special ore, coal and mineral lines of railway, in the State of Indiana; but that its entire business within Indiana is confined to ordinary local and interstate traffic and transportation.

Record P. C. C. & St. L. Ry. Co. Case, pp. 142, 144.

6. That it possesses franchises, franchise rights, contract rights, and properties of great value outside of, and beyond the jurisdiction of, the State of Indiana, and is largely engaged in the transportation of interstate commerce.

Record P. C. C. & St. L. Ry. Co. Case, pp. 96, 136, 141 to 144, 146, 147.

7. That the Pennsylvania Company is a foreign corporation, possessing valuable franchises and property rights outside of Indiana, and is largely engaged in the transportation of interstate commerce.

Record I. & V. R. R. Co. Case, pp. 105, 108, 123, 124.

With these facts in mind, the Court is asked to consider just what was done by the State Board as shown by its official record, and by the testimony of Hon. Claude Matthews, one of its members.

1. It assessed *all* of the rolling stock of the P. C. C. & St. L. Ry. Co. on the *mileage basis;* that is, it *apportioned to Indiana*, for taxation, such proportion of its entire "rolling stock" as its mileage in Indiana,—647.42 miles, bears to its entire mileage,—1145.87 miles. That is to say, *sixty per cent.* of its entire "rolling stock" and equipment was assessed *in Indiana*, while only *forty per cent.* of its gross earnings were earned *in Indiana*. This shows clearly that a very large part of this "rolling

stock" apportioned to and assessed in Indiana *was not needed or used in Indiana*, but *was needed and used outside of Indiana*. The amount of equipment needed and used is measured by *business*, not by *mileage*. The *sixty per cent.* of the entire gross earnings earned *outside* of Indiana required a far larger amount of "rolling stock" to be used in earning it, than the *forty per cent.* of the entire gross earnings earned *within* Indiana required to be used in earning it. And yet under this alleged law, the P. C. C. & St. L. Ry. Co. is required to pay taxes in Indiana upon *sixty per cent.* of its entire "rolling stock." Nearly *one-half* of this "rolling stock" so wrongfully and arbitrarily assessed for taxation in Indiana, *is taxed in other States in which it belongs and is used.* If this is not fictitious importation of values for taxation in Indiana, what is it? That it results in *double taxation* on the amount of imported valuation cannot be denied. This is one of the results of this *special law*, this *discriminating legislation.*

2. The State Board in assessing the "railroads and parts of roads" considered and took into account the market value of the entire stocks and bonds and the entire *gross and net earnings* of the P. C. C. & St. L. Ry. Co. It so states in its official record. This official certificate or statement proves beyond question that all of the *franchises* of this Railway Company granted to it by *four States* other than Indiana, all of its *connections*, its *business abilities and facilities*, its *earning power*, its *terminals*, and all of its *railways*, *properties* and *property rights* OUTSIDE *of Indiana*, were considered and estimated, and by reason of, and upon consideration of, these properties and values, *outside of nad foreign to the State of Indiana*, large values were arbitrarily added

and assigned to the "railroad" of the P. C. C. & St. L. Ry. Co. situated in Indiana,—*which added and arbitrarily assigned values constitute no part of the inherent and intrinsic value of said railroad situated in Indiana, as such.* Is not that assessing for taxation in Indiana, the personal attributes and qualities, the business ability, capacity and reputation, the earning power and the railways and properties of the P. C. C. & St. L. Ry. Co. procured, owned and enjoyed by it outside of Indiana?

Is it not taxing the *person* of this interstate railway corporation,—rather than its *Indiana property?* It is just this wrong that this alleged law sanctions and requires, and it is to seek redress for this wrong that these plaintiffs are now at the bar of this Court.

3. It never even considered,—much less assessed,—the inherent, intrinsic, genuine value of the "railroad track" and "rolling stock" of the I. & V. R. R. Co., *as the taxable property of that company.* But it did consider and assess *the "railroad" of the I. & V. R. R. Co., and the estimated value of the reputation, the business ability, and the franchises and facilities of the Pennsylvania Company and the P. C. C. & St. L. Ry. Co., outside of Indiana, as together constituting a single unit of taxable property.*

No one can read the testimony of Hon. Claude Matthews,—quoted *supra*, pp. 14, 15, 63,—and not know that this is true.

These wrongs are the natural and the *intended* result of this special, discriminating and partial legislation.

The sole purpose of this *classification*, this *special legislation*, is to permit and require the application of such different methods and rules of valuation as will procure a higher relative rate of assessment, *i. e.*, valua-

tion, and a consequent higher relative taxation, of railway property, than is imposed upon all other property.

Is this granting the *equal protection of the laws?* Is it providing a *uniform and equal rate of assessment and taxation?*

Could the assessment of the prescription case of one physician, or the surgical instruments of one surgeon, at *five times the value* of an equally good prescription case of another physcian, or an equally perfect and valuable set of surgical instruments of another surgeon, simply because the first physician and surgeon are more learned and skillful than the second physician and surgeon are, and can *earn more income* by the use of their instruments and appliances, than the second physician and surgeon can earn,—be held to be a "uniform and equal rate of assessment and taxation?" Would such an assessment be tolerated? Certainly not, and why? Simply because it would be *taxing the brains, the skill, the earning ability*, of the first physician and surgeon, *instead of their property.*

Yet just that is the principle, the method, the rule of assessment inaugurated, and applied to railway property by this pretended law.

Authorities in support of the proposition now under consideration are abundant, and of the highest rank.

In *County of San Mateo* v. *Southern Pacific R. Co.*, 13 Fed. Rep. 722, S. C. 8 Sawyer, 238, Mr. Justice Field used the following language touching the point under discussion:

"The questions thus presented for our determination are of the greatest magnitude and importance. The answer to them concerns not merely the railroad

corporations of this State, but all corporations other than municipal within the United States. It is of the highest interest to them all to know whether their property is subject to the *same rules of assessment and taxation* to which the property of individuals is subject, *or whether it can be separated and distinguished from that of individuals and made liable to such different burdens in the way of taxation as the State may choose to impose.* The questions have been argued with great ability and learning by distinguished counsel on both sides, and they have received from the court the most patient and thoughtful examination. Indeed, their examination has been accompanied with a painful anxiety to reach a right conclusion, aware, as the Court is, of the opinion prevailing throughout the community that the railroad corporations of the State, by means of their great wealth and the numbers in their employ, have become so powerful as to be disturbing influences in the administration of the laws; an opinion which will be materially strengthened by a decision temporarily relieving any one of them from its just proportion of the public burdens. That consideration, however, cannot be allowed to affect the judgment of the court. Whatever acts may be imputed justly or unjustly to the corporations, they are entitled when they enter the tribunals of the nation to have the same justice meted out to them which is meted out to the humblest citizen. *There cannot be one law for them and another law for others.* * * * *

"As the foundation of all just and equal taxation is the assessment of the property taxed,—that is, the ascertainment of its value,—in order that the tax may be levied according to some ratio to the value, uniformity of taxation necessarily requires uniformity in

the mode of assessment as well as in the rate of taxation; or, to quote the language of the Supreme Court of Ohio, in expressing the same thought: '*Uniformity in taxing implies equality in the burden of taxation, and this equality of burden cannot exist without uniformity in the mode of assessment as well as in the rate of taxation.*' *Exchange Bank of Columbus* v. *Hines*, 3 Ohio St. 1.

* * * The whole object of classifying property is that *each class may be subjected to a special rate of taxation*. There is no difference in the rate prescribed by the law of the State for the property of railroad corporations, and the rate prescribed for the property of individuals. There is only *one rate* for all property. There is, therefore, *no case presented for the application of the doctrine of classification*. The discrimination complained of arises from the *different rule adopted in ascertaining the value of the property of railroad corporations as a basis for taxation*, not from any different rate of taxation when the value is established. * * * All the guaranties and safeguards of the constitution for the protection of property possessed by individuals may, therefore, be invoked for the protection of the property of corporations. And as no discriminating partial legislation, imposing unequal burdens upon the property of individuals, would be valid under the Fourteenth Amendment, so no legislation imposing such unequal burdens upon the property of corporations can be maintained. The taxation, therefore, of the property of the defendant upon an assessment of its value, without a deduction of the mortgage thereon, is to that extent invalid. * * *

"The 'equal protection of the laws' to any one implies not only that he has a right to resort on the

same terms with others to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also that he is exempt from any greater burdens or charges than such as are *equally* imposed upon all others under like circumstances. *This equal protection forbids unequal exactions of any kind, and among them that of unequal taxation.*"

In his concurring opinion in the same case, Judge Sawyer said:

"We do not conceive that a provision for assessing railroads operated in more than one county, by the State Board of Equalization, while other local property is assessed by the local assessors, would be denying the equal protection of the law, *provided the assessment in the former case is, in all respects, made upon the* SAME BASIS, *under the* SAME RULES *and upon the* SAME PRINCIPLES *as to value, notice, opportunity to be heard, &c., as in the latter.*"

13 Fed Rep., 730, 735, 737, 748, 779.

In *County of Santa Clara* v. *Southern Pacific R. Co.*, 18 Fed. Rep., 385, S. C. 9 Sawyer, 165, Mr. Justice Field said:

"The basis of all *ad valorem* taxation is necessarily the assessment of the property; that is, the estimate of its value. Whatever affects the value necessarily increases or diminishes the tax proportionately. If, therefore, *any element* which is taken into consideration in the valuation of the property of one party, be *omitted* in the valuation of the property of another, a *discrimination is made against the one*, and in favor of the other, *which destroys the uniformity so essential* to all just and *equal taxation.* * * *

"The principle which sanctions the elimination of one element in assessing the value of property held by one party, and takes it into consideration in assessing the value of property held by another party, would sanction the assessment of the property of one at less than its value,—at a half or a quarter of it,—and the property of another at more than its value,—at double or treble it,—according to the will or caprice of the State. *To-day railway companies are under its ban, and the discrimination is against their property.* To-morrow it may be that other institutions will incur its dis pleasure. * * *

"*Unequal taxation*, so far as it can be prevented, *is*, therefore, with other unequal burdens, *prohibited by the amendment*. There undoubtedly are, and always will be, more or less inequalities in the operation of all general legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, from *a carefully devised scheme to produce such inequality;* or a scheme, if not so devised, necessarily producing that result. Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position, that unequal taxation is not within the scope of its prohibitory clause, would give it a singular meaning. It is a matter of history that unequal and discriminating taxation leveled against special classes has been the fruitful means of oppressions, and the cause of more commotions and disturb-

ance in society, of revolutions and insurrections, than any other cause in the world. It would, indeed, as counsel in the San Mateo case ironically observed, be a charming spectacle to present to the civilized world, if the amendment were to read as contended it does in law: 'Nor shall any State deprive any person of his property without due process of law, *except it be in the form of taxation*, nor deny to any person within its jurisdiction the equal protection of the laws, *except it be by taxation*. No such limitation can be thus engrafted by implication upon the broad and comprehensive language used. The power of oppression by taxation without due process of law is not thus permitted; *nor the power by taxation to deprive any person of the equal protection of the laws.*"

18 Fed. Rep., 394, 395, 399.

The case of *Exchange Bank of Columbus* v. *Hines*, 3 Ohio State, 1, is a leading case on this point. It is cited with approval by the Supreme and Circuit Courts of the United States, by courts of last resort of many other States, and by the text writers.

The constitution of Ohio requires: "Taxes shall be assessed on *all* property by a *uniform rule:* and all taxable property shall be taxed at its *true value in money.*"

In holding a section of a taxing law unconstitutional and void, the Court of Ohio, *supra*, by Chief Justice Bartley—I quote from pages 15 and 43,—said:

"What is meant by the words, '*taxing by a uniform rule?*' And to *what* is the rule applied by the constitution? No language in the constitution, perhaps, is more important than this; and to accomplish the beneficial purposes intended, it is essential that they should be

truly interpreted and correctly applied. '*Taxing*' is required to be '*by a uniform rule*'; that is, by one and the SAME UNVARYING STANDARD. *Taxing by a uniform rule requires uniformity, not only in the rate of taxation, but also uniformity in the* MODE OF ASSESSMENT *upon the taxable valuation.* Uniformity in taxing implies equality in the burden of taxation; *and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation.* But this is not all. The uniformity must be co-extensive with the territory to which it applies. If a State tax, it must be uniform all over the State; if a county, town or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the constitution does not stop here. It must be extended to *all property* subject to taxation, so that all property may be taxed alike, equally—which is taxing by a uniform rule. * * *

"In regard to taxation, equality is the great idea of the constitution. Inequality was the pre-existing evil. Equality is the remedy. Thus, Section 2d requires *all* property (I use the words here in the broad sense,) burying grounds, certain property devoted to religious, charitable and public uses, and $200 of personal property excepted, to be taxed. It is to be taxed *at its true value in money, and by a uniform rule.* There is to be no *false valuation*, no rule that exempts some property and casts the burden of government upon the rest; no different rates of taxation upon different kinds of property in the same locality. Such is Section 2d. All is uniformity, all equality."

This decision has been repeatedly approved and affirmed by the Supreme Court of Ohio. In *Fields* v.

Commissioners of Hyland County, 36 Ohio State, 481, in holding a tax law unconstitutional, Chief Justice Boynton said:

"But whether or not the act is general in its nature we find it unnecessary to determine. In our opinion it is clearly in conflict with Section 2, Article 12, of the Constitution, which, with certain specific exceptions, requires *all* real and personal property to be taxed by a uniform rule, and according to its true value in money. 'Equality of burden is the principle of the Constitution.' There is to be 'no rule that exempts some property and casts the burden of government upon the rest.' *Exchange Bank of Columbus* v. *Hines*, 3 Ohio State, 43."

In *Treasurer* v. *Bank*, 47 Ohio State, 519, the decision in *Exchange Bank of Columbus* v. *Hines*, *supra*, is again approved. In this decision the Court made the following announcement of law, eminently applicable to the cases at bar:

"But the standard of *equality* and *uniformity* in taxation has been established by the Constitution *for corporations and individuals alike*."

The Constitution of Wisconsin provides that: "The rule of taxation shall be uniform."

In *Gilman* v. *City of Sheboygan*, 2 Black, (U. S.) 515, this Court, speaking by Mr. Justice Swayne, in holding a law of Wisconsin unconstitutional and void, approved and adopted the following from the decision in *Knowlton* v. *The Supervisors of Rock County*, 9 Wis., 410, viz:

"The constitution has fixed an unbending uniform rule of taxation for the State, *and property cannot be classified and taxed as classed by different rules*."

The following decisions of the Supreme Court of Wisconsin are to the same effect, and are strongly in

support of our proposition now under discussion, namely:

Knowlton v. *Supervisors of Rock County*, 5 Wis., * pp. 419 to 425.

Weeks v. *Milwaukee*, 10 Wis., * pp. 258 to 260.

Lumsden v. *Cross*, 10 Wis., * pp. 284 to 287.

State v. *Win. L. & F. R. P. R. Co.*, 11 Wis., * pp. 35 to 45.

In *Cummings* v. *National Bank*, 101 U. S., 158 to 163, this Court, speaking by Mr. Justice Miller, fully *approved and quoted* from, the decision in *Exchange Bank of Columbus* v. *Hines*, *supra*, and closed the decision as follows:

"But whatever may be its cause, when it is recognized as the source of manifest injustice to a large class of property around which the constitution of the State has thrown the protection of *uniformity of taxation* and *equality of burden*, *the rule must be held void*, and the injustice produced under it must be remedied so far as the judicial power can give remedy. The complainant having paid to defendant, or into the Circuit Court for his use, the tax which was its true share of the public burden, the decree of the Circuit Court enjoining the collection of the remainder is *affirmed*."

The following decisions are directly in point, in support of the proposition now under consideration.

McComb v. *Bell*, 2 Minn. (Gillman's Ed.), 256, 264, 265.

Howell v. *Bristol*, 8 Bush, (Ky.), 493, 497 to 499.

Trustees of the Cincinnati Southern Railway v. *Guenther*, 19 Fed. Rep., 395.

In *Central Railroad of New Jersey* v. *State Board of Assessors*, 7 Atlantic Reporter, 306; S. C. 49 N. J. L., 1,

the Supreme Court of New Jersey held a section of the law of that State, very similar to Section 83 of the statute here under consideration, unconstitutional and void, because in conflict with the Federal constitution. The syllabus is all that need be quoted, but the entire decision is instructive and cites several authorities strongly in point. The material part of the syllabus is as follows:

"Section 9 of the act provides that in case of a railroad of this State being under lease to a foreign corporation, any tangible personal property of such foreign company, if used or kept but a part of the time in this State, shall be assessed such proportionate part of its value as the time it is used or kept in this State during the year preceding the first day of January designated in the act bears to the whole year; and it appearing that certain engines and cars were used on its leased lines in this State by the Philadelphia and Reading Railroad Company in the course of interstate commerce, such company having in use a full local equipment of such leased lines, which was duly taxed in this State; *held* that *the tax upon such property employed in interstate commerce was illegal*, being in contravention of that clause of the constitution of the United States that gives to Congress the exclusive regulation of commerce between the several states. (*Syllabus by the Court.*)"

In *People* v. *Weaver*, 100 U. S., 539, the clause of the act of Congress, passed in 1864, providing that taxation of the shares in national banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individual citizens of the State, and that the shares owned by non-residents of the State shall be taxed at the place where the bank is located, was construed. (R. S., 5219). In this case it was held:

First. That the restriction against *discrimination* has reference to the entire process of assessment, *and includes the valuation of the shares* as well as the *rate of percentage charged thereon.*

Second. That the statute of New York, which established a *mode of assessment* by which such shares were *valued higher* in proportion to their real value than other moneyed capital, was in conflict with the restriction, although no greater percentage was levied on such valuation than on other moneyed capital.

The Supreme Court of Indiana has clearly announced the exact principle decided in the cases above quoted and cited.

In *Bright* v. *McCullough, Treasurer*, 27 Ind., 230, 231, 232, the Court, speaking by Elliott, J., announced the law as follows:

"Taxes are public burdens, which should be borne by all, and it was evidently the object of the convention, in the adoption of this and other provisions of the constitution, to devise a system for the *assessment* and levy of taxes that would distribute these burdens among those liable to them, *upon principles of uniformity, equality and justice.* To this end the primary principle adopted is that taxes shall be assessed on the property liable thereto, *according to its just value, and by a uniform and equal rate.*"

This announcement is followed by lengthy quotations in the opinion from two decisions of the Supreme Court of Ohio, viz: *The City of Zanesville* v. *Richards, Auditor*, 5 Ohio State, 589, and *Exchange Bank of Columbus* v. *Hines*, 3 Ohio State, 1. The paragraph quoted from this *last* named decision with *full approval* is the *same paragraph* quoted from that decision, *supra.* In

this paragraph the Ohio Court says: "*Equality of burden cannot exist without uniformity in the mode of assessment.*"

Counsel for defendants in error, in the Circuit and Supreme Courts, laid great stress upon the decisions of this Court in:—

Illinois State Railroad Tax Cases, 92 U. S., 610, 611, 612.

Kentucky Railroad Tax Cases, 115 U. S., 337.

In States in which the State constitution gives to the legislature the express right to classify property for purposes of taxation,—as is the case in *Illinois:* and *in States in which the State constitution does not require taxes to be levied by a uniform method, and at a "uniform and equal rate of assessment," and does not forbid the classification of property for purposes of taxation and the valuation of different classes by different methods, and at different rates of assessment*,—as was the case in *Kentucky*; the questions of DENIAL of "due process of law," and DENIAL of "equal protection of the laws," by reason of CLASSIFICATION *of property for taxation;* and by reason of the application to ONE CLASS of property of *different and discriminating methods, rules, elements and measurements of valuation, from those applied to all other property;* CANNOT ARISE,—*unless the provisions of the State constitutions result in such flagrant wrongs as to bring them into direct conflict with the Fourteenth Amendment.*

A careful, or even casual examination of the decisions in the Illinois and Kentucky Tax Cases above cited, will show that, instead of being authority in opposition to our proposition, *they are authority in its support.* In the *Illinois State Railroad Tax Cases, supra*, the decision is based upon the peculiar provision of the

Illinois Constitution, *which in express terms gives the Legislature power to classify railroad property by itself, for taxation, and only requires uniformity as to the class of property upon which the law operates.*

In the syllabus to the decision, it is said:

"While the constitution of Illinois requires taxation, in general, to be uniform and equal, it declares, in express terms, that a large class of persons engaged in special pursuits, among whom are persons or corporations owning franchises and privileges, may be taxed as the legislature shall determine, by a general law, *uniform as to the class upon which it operates;* and *under this provision* a statute is not unconstitutional which prescribes *a different rule of taxation for railroad companies from that for individuals.*"

Section 1, of Article 9, of the Illinois constitution, is as follows:

"Sec. 1. The General Assembly shall provide revenue as may be needful by levying a tax by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property,—such value to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, innkeepers, grocery-keepers, liquor-dealers, toll-bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or *corporations owning or using franchises and privileges*, in such manner as it shall, from time to time, direct by general law, *uniform as to the class upon which it operates.*"

In announcing the decision of this Court, Mr. Justice Miller said:

"As to Section 1, we need not inquire very closely whether the mode adopted by the statute and the rules of the Board of Equalization produces a valuation for railroad companies different from that of individuals, though, as we have already said, it does not appear to us to produce any inequality to the prejudice of the companies. But we need not pursue that inquiry very closely, because the latter part of the section, *in express terms authorizes the legislature* to 'tax persons and *corporations owning or using franchises* in such manner as it shall from time to time direct by general law;' and the only restriction on the power, as applied to this class, is, that it shall be '*uniform as to the class upon which it operates.*'

"There can be no doubt that all the classes named in this clause, including peddlers, showmen, innkeepers, ferries, express, insurance, and telegraph companies, *are taken out of the general rule of uniformity* prescribed by the first clause, and *the only limitation as to them is that of uniformity as to the class upon which the law shall operate;* that is, innkeepers may be taxed by one, ferries by another, railroads by another, provided that the rule as to innkeepers be uniform as to all innkeepers, the rule as to ferries uniform as to all ferries, the rule as to railroad companies uniform as to all railroad companies. As we have seen no evidence that the rule by which railroad property is taxed is not uniform in its action on all the railroad companies of Illinois, we can perceive no opposition to the constitution of the State in that rule."

It is evident that this decision hinges entirely upon

that provision of the constitution of Illinois, which provision is *in direct opposition* to the provisions of the constitution of Indiana. No one can believe that this Court would have upheld the Illinois law involved in those cases *if the constitution of Illinois had been the same as the constitution of Indiana, touching taxation.*

The constitution of Kentucky, of 1850,—which was the constitution in force when the *Kentucky Railroad Tax Cases, supra*, were decided,—*does not contain any provision at all touching the assessment* and valuation of property for taxation. *Classification* of property for taxation *is not prohibited. Uniformity and equality* in rate of assessment and taxation of all property *is not required.* The assessment, valuation and taxation of *one class of property* at a higher relative rate and valuation than another *class of property*, is *not prohibited.*

Any one can see at a glance that the decision of any court upholding a law enacted under such a constitution, can have no possible bearing upon the validity of a law enacted under such a constitution as that of Indiana.

A single paragraph of the opinion of this Court, as announced by Mr. Justice Matthews, in *Kentucky Railroad Tax Cases*, 115 U. S., 337, proves conclusively that that decision was based upon the *peculiar lack of restrictions touching assessment and valuation in the Kentucky constitution.* In the opinion it is said:

"But there is *nothing* in the constitution of Kentucky *that requires taxes to be levied by a uniform method upon all descriptions of property.* The whole matter is left to the discretion of the legislative power, and *there is nothing to forbid the classification of property for purposes of taxation and the valuation of different classes by differ-*

ent methods. The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of *each class,* so that the law shall operate equally and uniformly upon all persons in similar circumstances. There is no objection, therefore, to the *discrimination* made as between railroad companies and other corporations in the methods and instrumentalities by which the value of their property is ascertained."

Another paragraph of this same decision has already been quoted, by which it is shown that these Kentucky Railroad taxes *were not liens upon the property, and did not even constitute debts of the Railroad Companies, until they had been made so by regular suit in Court, and judgment after full trial.*

THIS LAW DISCRIMINATES AGAINST RAILWAY CORPORATIONS IN THE MATTER OF JURISDICTION OF ASSESSING OFFICERS AND TRIBUNALS.

It has already been shown that jurisdiction of all taxable property in the State,—*excepting "railroad track" and "rolling stocek,"*—is vested in the LOCAL ASSESSING OFFICERS AND BOARDS. It has further been shown that this law, by express provisions, gives to the owners, or representatives of all taxable property,—*excepting only "railroad track" and "rolling stock,"*—not less than *three* and possibly *six* HEARINGS before any change or increase in the sworn assessment lists and valuations, as made out and returned by such owners or representatives, can be made final and absolute. The township assessor must give a *hearing,* after notice, before he can make any change or increase in the assessment list returned to him by the owner or representative.

If, after the township assessor is satisfied with the

assessment list, the county assessor desires to add property to it or increase the valuations named in it, he must give the owner or representative a *hearing*, after due notice. If, after the county assessor has passed the assessment list as then perfect, the county board of review desires to add property to it or increase the valuations named in it, said county board must give the owner or representative a *hearing*, after due notice. If the county auditor desires to add property to, or increase the valuations upon, any assessment list, he must give the owner or representative a *hearing*, after due notice. If the county treasurer desires to add property to, or increase the valuation of property upon, any assessment list, he must give the owner or representative a *hearing*, after due notice.

If the owner or representative is dissatisfied with the decisions of either, or all, of these assessing officials, he can file his complaint before the State Board of Tax Commissioners, which is required to give him a HEARING.

It has further been shown that the owners of "railroad track" and "rolling stock" *are denied the jurisdiction of all local assessing officials*, as to these two items of their property: and that *this law not only fails to require any hearing to be given to them, but gives to the State Board of Tax Commissioners arbitrary power to render any hearing for the correction of errors and the redress of wrongs utterly impossible.* *Supra*, pp. 35 to 40, and 47 to 54.

Are not railway corporations, by these arbitrary provisions of this law, DENIED *rights, privileges and protections* of great value, which are freely given to all others? Can it be claimed that, as to the assessment of their "railroad track" and "rolling stock," they have *equal protection* with all other taxpayers?

One of the chief glories of our institutions consists in the right to *local self-government*,—which includes the right to the *jurisdiction of local tribunals*.

State Boards of Equalization have twice undertaken to usurp the jurisdiction of local assessing tribunals, and failed in each instance.

Wells, Fargo & Co. v. *State Board of Equalization*, 56 Cal., 197, 198, 199.

People, ex. rel. Crawford, v. *Lothrop*, 3 Col., 428, 463.

It is not here insisted that all property must be submitted to the jurisdiction of the *same* assessor or assessing board; but it is insisted that *all persons and corporations owning property subject to taxation, must have an equal opportunity, by the law, to protect themselves and their property from erroneous, unjust and unequal assessment, valuation and taxation.*

What *like* or *equal protection* is given by this law to railway corporations as to the assessment and valuation of their "railroad track" and "rolling stock?" NONE. If this is not *special* legislation, if it is not *class legislation* in its most tyrannical and arbitrary form, what is it? If it is not a denial of "*the equal protection of the laws*," words have lost their meaning.

In addition to the authorities already quoted and cited, the following decisions are in point in support of the proposition that this alleged law denies to these plaintiffs "*the equal protection of the laws*," and is, therefore, invalid, namely:

Scott v. *City of Toledo*, 36 Fed. Rep., 397.

Missouri v. *Lewis*, 101 U. S., 31.

Ex Parte Virginia, 100 U. S., 339, 347.

Strauder v. *West Virginia*, 100 U. S., 303, 308, 309.

Henderson v. *Mayor of New York*, 92 U. S., 259.

Barbier v. *Connelly*, 113 U. S., 31.

Soon Hing v. *Crowley*, 113 U. S., 709.

Neal v. *Delaware*, 103 U. S., 370.

Yick Wo v. *Hopkins*, 118 U. S., 367, 368, 369.

Lent v. *Tillson*, 140 U. S., 325, 326, 327.

Minneapolis and St. Louis Railway Co. v. *Beckwith*, 129 U. S., 26, 28, 29.

Palmer v. *McMahon*, 133 U. S., 668, 669.

California v. *Central Pacific Railroad Co.*, 127 U. S., 1, 2, 35, 38, 39, 40, 41.

Gilman v. *City of Sheboygan*, 2 Black, (U. S.,) 515.

Cummings v. *National Bank*, 101 U. S., 158 to 163.

Pelton v. *National Bank*, 101 U. S., 143.

National Bank v. *Kimball*, 103 U. S., 735.

Supervisors v. *Stanley*, 105 U. S., 305.

McComb v. *Bell*, 2 Minn., (Gillman's Ed.,) 256, 264, 265.

Howell v. *Bristol*, 8 Bush, (Ky.,) 493, 497, 498.

Walley's Heirs v. *Kennedy*, 2 Yerger, (Tenn.,) 554.

Stuart v. *Palmer*, 74 N. Y., 183, 188, 190, 194, 195.

Garvin v. *Daussman*, 114 Ind., 429, 433.

Campbell, et al., v. *Dwiggins, Treasurer, et. al.*, 83 Ind., 473, 481, 482.

Kuntz v. *Sumption, Treasurer*, 117, Ind., 1, 2, 3, 5, 6.

McEneney, et al., v. *The Town of Sullivan*, 125 Ind., 409, 410.

The Chicago and Northwestern Railroad Company v. *The Auditor General*, 53 Mich., 79, 85, 87, 88, 91, 92.

III.

THE ACT OF MARCH 6, 1891, PERMITS AND, IN EFFECT, REQUIRES THE STATE BOARD OF TAX COMMISSIONERS TO ASSESS AND VALUE FOR TAXATION, IN INDIANA, THE BUSINESS, BUSINESS CAPACITY, INSTRUMENTS, PROPERTIES, FACILITIES, CORPORATE FRANCHISES AND EARNINGS OF THE P. C. C. & ST. L. RY. CO., OWNED, USED, POSSESSED AND EARNED BY IT IN STATES OTHER THAN INDIANA, AS AN INTERSTATE CORPORATION, ENGAGED IN THE TRANSPORTATION OF INTERSTATE COMMERCE,—IN ADDITION TO THE ASSESSMENT AND VALUATION OF ITS "RAILROAD TRACK" AND "ROLLING STOCK" LAWFULLY AND CONSTITUTIONALLY SUBJECT TO TAXATION IN INDIANA; AND THIS HAS BEEN DONE IN THE CASE OF SAID PLAINTIFF IN ERROR NOW AT BAR.

UNDER PERMISSION AND SANCTION OF THIS LAW THE STATE BOARD OF TAX COMMISSIONERS HAS ALSO ASSESSED AND VALUED FOR TAXATION, IN INDIANA, THE FRANCHISES, BUSINESS FACILITIES, REPUTATION AND EARNING CAPACITY OF THE PENNSYLVANIA COMPANY,—A FOREIGN CORPORATION ENGAGED IN INTERSTATE TRAFFIC AND TRANSPORTATION,—BY IMPUTING AND ARBITRARILY ASSIGNING A PORTION OF THEIR ESTIMATED VALUE TO THE "RAILROAD" OF THE INDIANAPOLIS AND VINCENNES RAILROAD COMPANY,—A LOCAL COMPANY WHOSE CORPORATE PROPERTY IS WHOLLY WITHIN INDIANA.

The constitution of the United States provides that:

"The Congress shall have power: * * * *To*

regulate commerce with foreign nations, and *among the several States*, and with the Indian tribes."

Art 1, Sec. 8.

In the discussion of the proposition last considered;—that this law under consideration *denies* to these plaintiffs "*the equal protection of the laws*," touching the assessment and taxation of their "railroad track" and "rolling stock;"—it has been shown: That the State Board of Tax Commissioners, in making its pretended assessments of the "railroads and parts of roads" of these plaintiffs DID *take into account, consider, estimate and include, as elements of taxable value of said "railroads and parts of roads" of plaintiffs situated in Indiana*, THE BUSINESS, EARNINGS, BUSINESS CAPACITY, PECUNIARY ABILITY, EARNING POWER AND PERSONAL ATTRIBUTES AND QUALITIES OF THE P. C. C. & ST. L. RY. CO., AND THE PENNSYLVANIA COMPANY, AS FOREIGN CORPORATIONS ENGAGED IN THE TRANSPORTATION OF INTERSTATE COMMERCE: That said State Board, in making its said pretended assessments *did also take into account, consider, estimate and include, as increments to, and elements of, the taxable value of the "railroads and parts of road" of these plaintiffs, situated in Indiana*, THE RAILWAYS, PROPERTIES, TERMINALS, FRANCHISES AND CONTRACT RIGHTS OWNED, USED AND POSSESSED BY THE P. C. C. & ST. L. RY. CO. AND THE PENNSYLVANIA COMPANY IN STATES OTHER THAN INDIANA, AS FOREIGN CORPORATIONS LARGELY ENGAGED IN THE TRANSPORTATION OF INTERSTATE COMMERCE: And that this arbitrary, unlawful and unconstitutional action of said State Board IS PERMITTED, SANCTIONED AND REQUIRED BY THE ACT OF MARCH 6, 1891.

Without further repetition reference is here made to former parts of this argument devoted to the establishment of these statements by proofs drawn from the

law, from the official statements of the State Board, and and from the testimony in the records of these causes: *supra*, pp. 161 to 170; 136 to 144; 55 to 69; 23 to 26; 6 to 17.

In fact the sole and supreme purpose of the schedules required by Section 85 of this law is to enable the State Board to assess and value for taxation *in Indiana* the *business*, the *personal attributes and abilities*, the *earning capacities*, the *properties*, *instruments* and *facilities* of foreign, consolidated and interstate railway corporations, owned, possessed and used by them OUTSIDE OF INDIANA. For *this purpose, and none other*, did the State Board consider "*the market value of the stocks and bonds and the gross and net earnings*" of the P. C. C. & St. L. Ry. Co. on its *entire system* of railways,—on its railways in Pennsylvania, West Virginia, Ohio and Illinois,—on its *entire interstate railways* extending from Pittsburgh to Chicago.

It needs no argument to prove that any attempt upon the part of the State of Indiana, *either directly or indirectly*, to impose taxes either upon the business, the business ability and reputation, the personal qualities and attributes, the earning capacities, the earnings, franchises and contract rights, of the P. C. C. & St. L. Ry. Co. and the Pennsylvania Company, or either of them, *as foreign, consolidated, interstate railway corporations*, carrying on the business of transporting both local and interstate commerce *outside of Indiana*, as well as *within* Indiana; or upon the instruments, appliances, properties, facilities and connections of said railway corporations, or either of them, *situated in other States*, and owned, possessed and used in their business as foreign, consolidated, interstate railway corporations;—*is an attempt to impose taxes upon interstate commerce.*

Assessments, for taxation in Indiana, which take into account, consider and include any or either of the above named items or values, ARE ASSESSMENTS LEVIED UPON INTERSTATE COMMERCE.

Authority in support of this proposition is abundant and conclusive.

In *Railroad Company* v. *Pennsylvania*, 15 Wall. (U. S.), 319,—which is commonly known under the title of "*State Tax on Foreign Held Bonds*,"—this Court announced the decision thus:

"The power of taxation, however vast in its character and searching in its extent, *is necessarily limited to subjects within the jurisdiction of the State.* These subjects are persons, property and business. Whatever form taxation may assume, whether as duties, imposts, excises or licenses, it must relate to one of these subjects. * * * We are clear that the tax cannot be sustained; that the bonds, *being held by non-residents of the State*, are only property in their hands, and they *are thus beyond the jurisdiction of the taxing power of the State.*"

This decision has been recognized, ever since its announcement, as the law of the land.

In *Ratterman* v. *Western Union Telegraph Company*, 127 U. S., 424, 425, Mr. Justice Miller said:

"Neither are we of opinion that there is any real question, under the decisions of this Court, in regard to holding that, *so far as this tax was levied upon receipts properly appurtenant to interstate commerce, it was void*, and that so far as it was only upon commerce wholly within the State it was valid. * * *

"In *Pensacola Telegraph Company* v. *Western Union Telegraph Company*, 96 U. S. 1, it was decided by this Court that the telegraph was *an instrument of commerce;*

that telegraph companies were subject to the regulating power of Congress in respect to their foreign and interstate business, and that such a company occupies the *same relation to commerce*, as a carrier of messages, *that a railroad company does as a carrier of goods.*"

In *Leloup* v. *Port of Mobile*, 127 U. S. 648, Mr. Justice Bradley, after an exhaustive discussion of the point now under consideration, in summing up and giving final conclusions, said:

"In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce and amounts to the regulation of it, which belongs solely to Congress. This is the result of so many recent cases that citation is hardly necessary."

In *Philadelphia Steamship Company* v. *Pennsylvania*, 122 U. S. 336, Mr. Justice Bradley said:

"If, then, the commerce carried on by the plaintiff in error in this case could not be constitutionally taxed by the State, could the *fares and freights* received for transportation in carrying on that commerce be constitutionally taxed? If the State cannot tax the transportation, may it, nevertheless, tax the fares and freights received therefor? Where is the difference? Looking at the substance of things, and not mere forms, it is very difficult to see any difference. The one thing seems to be tantamount to the other. It would seem to be rather metaphysics than plain logic for the State officials to say to the company: 'We will not tax you for the

transportation you perform, but we will tax you for what you get for performing it.' Such a position can hardly be said to be based on a sound method of reasoning."

In this same decision at page 342, the decision in *State Tax on Railway Gross Receipts*, 15 Wall. (U. S.) 284, is, in effect, squarely overruled. All the recent decisions are squarely against the doctrine announced in that decision.

In *Western Union Telegraph Co.* v. *Alabama*, 132 U. S., 473, Mr. Justice Miller said:

"The question on which the jurisdiction of this Court depends has been decided in this Court so frequently of late years, several of the decisions having been made since the judgment of the Supreme Court of Alabama was delivered, that but little remains to be said in the present case except that it comes within the principles of the cases referred to.

"That principle is, in regard to telegraph companies which have accepted the provisions of the Act of Congress of July 24, 1866, Sections 5263 to 5268 of the Revised Statutes of the United States, that they *shall not be taxed* by the authorities of a State for any messages, or *receipts arising from messages* from points within the State to points without, or from points without the State to points within, but that such taxes may be levied upon all messages carried and delivered exclusively within the State. The foundation of this principle is that messages of the former class *are elements of commerce between the States* and not subject to legislative control of the States, while the latter class are elements of internal commerce solely within the limits and jurisdiction of the State, and therefore subject to its taxing power."

In *McCall* v. *California*, 136 U. S., 104, San Francisco undertook to impose a license tax upon an agency in that city of a line of railroad between Chicago and New York. The object of that agency was to solicit passengers for the Chicago and New York line. The tax was held to be void. In the opinion,—page 109,—it is said:

"The object and effect of his soliciting agency were to swell the volume of the business of the road. It was one of the '*means*' by which the company sought to increase and doubtless did increase its interstate passenger traffic. It was not incidentally or remotely connected with the business of the road, but was a direct method of increasing that business. The tax upon it, therefore, was according to the principles established by the decisions of this Court, a tax upon a *means* or an occupation of carrying on interstate commerce, pure and simple."

In *Crutcher* v. *Kentucky*, 141 U. S., 47, Mr. Justice Bradley, in holding a law passed by the Legislature of Kentucky unconstitutional and void, notwithstanding the fact that the Court of Appeals of Kentucky had sustained the law in an elaborate opinion,—at pages 56, 57 and 58,—said:

"We regret that we are unable to concur with the learned Court of Appeals of Kentucky in its views on this subject. The law of Kentucky, which is brought in question by the case, requires from the agent of every express company not incorporated by the laws of Kentucky a license from the Auditor of Public Accounts, before he can carry on any business for said company in the State. This, of course, embraces interstate business as well as business confined wholly within

the State. It is a prohibition against the carrying on of such business without a compliance with the State law. * * *

"To carry on interstate commerce is not a franchise or a privilege granted by the State; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their business, cannot have the effect of depriving them of such right, unless Congress should see fit to interpose some contrary regulation on the subject. * * *

"As was said by Mr. Justice Lamar, in the case of *Norfolk and Western Railroad* v. *Pennsylvania*, 136 U. S. 114, 118, last cited, 'It is well settled by numerous decisions of this court, that a State cannot under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in interstate commerce, or *impose any burden upon said commerce within its limits.*"

In *Pacific Express Company* v. *Seibert*, 142 U. S., 349, it is said:

"It is well settled that a State cannot lay a tax upon interstate commerce in any form, whether by way of duties laid upon the transportation of the subjects of that commerce, *or the receipts derived from that transportation or on the occupation or business of carrying it on;* for the reason that such taxation is a burden on that commerce and amounts to a regulation of it which belongs to Congress."

The decisions in the following cases are to the same effect, and fully support the propositions above stated, viz:

California v. *Central Pacific Railroad Co.*, 127 U. S., 2, 41, 45.

Telegraph Co. v. *Texas*, 105 U. S., 460, 464.

Chy Lung v. *Freeman, et al.*, 92 U. S., 275, 280, 281.

Norfolk and Western Railroad Company v. *Pennsylvania*, 136 U. S., 114, 119, 120.

Pickard v. *Pullman Southern Car Co.*, 117 U. S., 34.

Fargo v. *Michigan*, 121 U. S., 230.

Lyng v. *Michigan*, 135 U. S., 166.

Gloucester Ferry Co. v. *Pennsylvania*, 114 U. S., 196.

Lehigh Valley Railroad Co. v. *Pennsylvania*, 145 U. S., 192, 200, 201.

State of Indiana, ex rel. Wolf, Auditor, v. *Pullman Palace Car Co.*, 16 Fed. Rep., 193.

Vermont & C. R. Co., et al., v. *Vermont Central R. Co., et al.*, 63 Vt., 1.

Chicago and Northwestern Railroad Co. v. *The Auditor General*, 53 Mich., 79.

Northern Pacific Railroad Co. v. *Raymond, Treasurer*, 37 American and English Railroad Cases, 379, 385.

These decisions establish beyond reasonable controversy the proposition that any tax, either *direct* or *indirect*, imposed by the Indiana State Board of Tax Commissioners, upon either the instruments, facilities, properties, earnings, business, pecuniary abilities, reputation, earning capacities, or franchises of the P. C. C. & St. L. Ry. Co., or the Pennsylvania Company, owned, possessed, earned and used, by said railway corporations *outside of Indiana*, in their business of transporting commerce as foreign, consolidated or interstate corporations, IS A TAX UPON INTERSTATE COMMERCE, AND, THERE-

FORE, UNCONSTITUTIONAL. It is plain that *to increase the valuation*—and consequent taxation—of the property of the P. C. C. & St. L. Ry. Co. *situated in Indiana*, BECAUSE *it is an interstate corporation*, and owns, possesses and uses, *outside of Indiana*, properties, abilities, capacities and franchises, of the character above named, of great value, IS TO TAX INTERSTATE COMMERCE. The record proves beyond any shadow of doubt that just that has been done in the case of the P. C. C. & St. L. Ry. Co., one of these plaintiffs in error.

It is also plain that *to increase the valuation* of the "railroad" of the I. & V. R. R. Co.,—a domestic corporation whose railway is wholly in Indiana,—BECAUSE *the Pennsylvania Company is its lessee*, IS TO TAX THE ATTRIBUTES, ABILITIES, CAPACITIES, PROPERTIES AND FRANCHISES OF THE PENNSYLVANIA COMPANY, *as a foreign corporation engaged in the transportation of interstate commerce;* and *is*, therefore, *a tax upon interstate commerce.*

The testimony of Hon. Claude Matthews,—*supra*, pp. 14, 15, 63,—proves beyond any shadow of doubt that just such *increase of valuation* was made in the pretended assessment of the "railroad" of the I. & V. R. R. Co., one of these plaintiffs in error.

The Supreme Court of Indiana, in the opinion rendered by Olds, J., fully recognized the fact that these assessments here complained of, *are* of the exact kind and character, and *include the increased valuations*, above described; and were so made for the reasons above stated. The opinion is an attempted defense of that kind of assessments. In the face of all the decisions of this Court to the contrary, it is based, and proceeds, upon the theory that it is *right* and *constitutional* to add large amounts to the assessment of the *Indiana portion*

of the railway of the P. C. C. & St. L. Ry. Co.,—over and above its inherent and true cash value,—*because* the P. C. C. & St. L. Ry. Co. *is an interstate corporation* engaged in interstate traffic and transportation; and *because* it owns and uses valuable lines of railway, and valuable terminals, facilities and equipments *outside* of Indiana; and *because* it possesses large capital, valuable franchises, good business ability and reputation and large earning capacity *outside of Indiana.* It upholds and defends the action of the State Board, in assessing the railroad of the I. & V. R. R. Co. *much higher* than it would otherwise have been assessed, *because* the Pennsylvania Company *is its lessee.* It ignores and repudiates the patent fact that the true cash value,—the genuine taxable value,—of any piece of tangible property, is ITS *inherent, intrinsic value,* and *not* the value of the *business,* the *ability,* the *capital,* the *earning capacity* of its OCCUPANT AND USER.

No one can read this opinion without being amazed by the boldness with which it claims that it is *right* and *constitutional to disregard State lines* in the assessment of the property of railroad corporations, and to tax *in Indiana,* not only the railway property *in* Indiana, but also the *business, capital, ability, earning capacity and foreign property* of its occupant and user. It says:

"It is evident that no fair and equitable value could be placed on a 'railroad track' by severing it into parts *extending* from one township or county line to another, or even *from one State line to another,* and *estimating only the portions lying within the borders of a single* township, county, or *State,* independently of *its connection beyond such lines,* or by considering the cost of constructing any such division, *nor could the value of an engine or car* or

other property coming within the class of property denominated in the act under consideration as rolling stock *be determined by considering the purpose for which it was used in any State* or subdivision of a State or the cost of construction of the same, and to limit the right of the State to tax "rolling stock" which might, at the date of assessment, be found within the State or subdivision of the State would be, in effect, to release such property from taxation.

"A railroad is valuable *as a whole* and every section of the line going to make up the whole is essential. *The portion of a track crossing unreclaimed land of practically no value is as valuable as that portion which runs through a populous city, in so far as its purpose and use is that of an interstate line*, for without either the connection would be broken and its use destroyed *for that purpose*. The value of such portion is increased by reason of its connection. * * *

"Presumptively the line of railroad track and rolling stock is of no greater value *beyond* the borders of the State than *within* the borders of the State."

This last sentence is manifestly an attempted defense of the evident action of the State Board in *averaging* the estimated value of the *entire system of railways* of the P. C. C. & St. L. Ry. Co., both *outside of* and *within* Indiana, upon the mileage basis, and applying this *average value per mile of the entire system to the mileage in Indiana, regardless of its actual value.*

If such a system of assessment does not inevitably result in imposing taxes upon interstate commerce, by taxing in Indiana the instruments, properties, business, capital and franchises of the P. C. C. & St. L. Ry. Co. *situated in other States* and used by it in the transporta-

tion of interstate commerce, it would be difficult to to devise a system of assessment that would result in the indirect taxation of interstate commerce.

Counsel for defendants in error, in their arguments in the State Court, seemed to ignore any difference or distinction between *excise taxes* and *ad valorem taxes;* and cited, in support of the manifest wrong and injustice inevitably resulting from the administration of this pretended law, a line of decisions relating to and dealing with *excise taxes.* Assuming that the same course will be pursued in argument of these causes in this Court, it may not be improper to briefly consider some of these decisions.

The wide distinction between these two kinds of taxation renders decisions with reference to statutes imposing *excise or privilege taxes*, quite inapplicable to statutes imposing *ad valorem taxes.*

The Legislature of any State may adopt any method it sees fit for ascertaining the amount of excise taxes it wishes to impose upon any corporation or person. An *excise tax* is not a tax upon property, it is a *fee exacted for a privilege granted by the State.* Hence, decisions under statutes imposing excise or privilege taxes, constitute no authority touching the imposition of *ad valorem taxes.*

If any State Legislature should say to the Western Union Telegraph Company: "The State will impose an excise tax upon your company, for the privilege of doing business in this State, to an amount equal to one mill on every dollar's worth of property owned by your company anywhere in the world," that would be simply and solely an *excise tax*, measured, as to amount, as above indicated.

In *County of San Mateo* v. *Southern Pacific R. R. Co.*, 18 Fed. Rep., 409, Mr. Justice Field draws this distinction with exactness and clearness, in the use of the following language:

"In the argument of counsel, the distinction between taxes for licenses and franchises, and taxation upon values, seems to have been overlooked, and because no notice is required in the former case, and no opportunity given to be heard, therefore it is contended that the rule is not sound; that notice is necessary and an opportunity of being heard in the latter case where an assessment is made upon property and values are found upon evidence; yet the distinction is plain and everywhere recognized. A license tax paid by an insurance company of another State, in order to exercise its corporate powers in this State, is the consideration given for a privilege which the company may or may not take; if taken, the fee must be paid."

In *Hagar* v. *Reclamation District No. 108*, 111 U. S., 701, 709, 710, Mr. Justice Field said:

"Of the different kinds of taxes which the State may impose, there is a vast number of which, from their nature, no notice can be given to the taxpayer, nor would notice be of any possible advantage to him, such as poll taxes, license taxes, (not dependent upon the extent of his business,) and generally, specific taxes on things, or persons, or occupations. In such cases, the legislature, in authorizing the tax, fixes its amount, and that is the end of the matter. * * * So, also, if taxes are imposed in the shape of licenses for privileges, such as those on foreign corporations for doing business in the State, or on domestic corporations for franchises, if the parties desire the privilege, they have

only to pay the amount required. In such cases there is no necessity for notice or hearing. The amount of the tax would not be changed by it. But where a tax is levied on property not specifically, but according to its value, to be ascertained by assessors appointed for that purpose upon such evidence as they obtain, a different principle comes in. The officers in estimating the value act judicially."

One of the decisions cited and relied upon by counsel for defendants in error, in their arguments in the State courts is:

Maine v. *Grand Trunk Railway Co.*, 142 U. S., 217.

In this case the majority opinion of the court was rendered by *Mr. Justice Field.* It will be remembered that Mr. Justice Field, when on Circuit, rendered the decisions in *County of Santa Clara* v. *Southern Pacific R. R. Co., and County of San Mateo* v. *Southern Pacific R. R. Co.* which decisions have been always regarded as pioneer decisions, and as stating the law correctly in so complete and perfect a manner as to make these two decisions leading cases throughout the entire country, cited, approved and quoted in text books, and in decisions of adjudicated cases almost without number. It is hardly to be supposed that Mr. Justice Field, in 1891, rendered any decision or agreed to any opinion contradicting or overruling his decisions in the *Santa Clara* and *San Mateo* cases. The very first lines in his opinion in *Maine* v. *Grand Trunk Ry Co., supra,* show clearly that the case as decided by the majority of the court does not affect in the slightest degree the point here under discussion.

I quote from pages 227, 228, three or four sentences, as follows:

side of Delaware, because such an amount of the capital stock of the company as would be the proportion of Delaware upon the mileage basis was not actually owned in Delaware, and that, therefore, part of this excise tax was laid upon property outside of Delaware. Appellant also further claimed that this was in fact *not an excise tax*, but a tax upon the shares of the capital stock in the hands of the then owners thereof. *Mr. Justice Field* rendered the decision in this case also, and very clearly states in the opinion that if the contention of the appellant as above stated were correct, the tax could not be sustained. On page 229 Mr. Justice Field stated, "If the assumption of appellant were correct, there would be difficulty in sustaining the validity of the tax." Again, upon the claim of appellant that the taxes reached out beyond the territorial limits of Delaware because the ratio of the value of the property in Delaware to the value of the whole property of the company was less than that which the length in Delaware bore to the entire length, which fact was admitted in the case, therefore, if it were regarded as a tax imposed upon the *property* in Delaware, the facts would prove an *excess of jurisdiction*. Touching this point Mr. Justice Field again said: "We repeat, therefore, that upon the assumption made by the appellant, there would be difficulty in sustaining the tax." The opinion proceeds to hold and show clearly that this tax was *not* a tax upon the *shares* of the individual stockholders, and that it was *not* a tax upon the *property* of the corporation, but that it was a tax upon the *corporation* itself. In other words, that it was a *privilege or excise tax*, levied upon the corporation for the privilege of existing and transacting business in

Delaware. This decision cannot, therefore, have any application to the cases at bar.

Another decision much relied upon by counsel for defendants in error is the decision in *State Tax on Railway Gross Receipts*, 15 Wall., (U. S.,) 284.

As to the point in support of which it was cited, namely: That a tax upon gross receipts of an *interstate line of railway* is not a tax upon interstate commerce, *because* not a tax upon the *freight itself*, the decision has been *overruled*.

In *Philadelphia Steamship Co.* v. *Pennsylvania*, 122 U. S., 340, 341, 342 Mr. Justice Bradley discusses the decision in *State Tax on Railway Gross Receipts*, and closes the discussion thus: "A review of the question convinces us that the first ground on which the decision in *State Tax on Railway Gross Receipts* was placed is not tenable; that it is not supported by anything decided in *Brown* v. *Maryland*; but, on the contrary, that the reasoning in that case is decidedly against it."

The opinion shows clearly that this Court was very doubtful of its first ground of decision, and sought to base the case on the right of States to impose excise taxes. *Justices Miller, Field and Hunt dissented.* Mr. Justice Miller wrote the dissenting opinion, which appears on pages 277, 278 and 279 of 15 Wall. The very clear statements of this dissenting opinion are now recognized by this Court as the law of the land, and the decision in which this dissenting opinion was written, is regarded as overruled.

Again, in *Fargo* v. *Michigan*, 121 U. S., 230, 242, 243, Mr. Justice Miller, in announcing the unanimous decision of this Court, in effect, *fully overruled* the decision in *State Tax on Railway Gross Receipts, supra*,

as to the only point on which it could possibly have any application to the cases at bar.

It is difficult to see why counsel for defendants in in error cited and seemed to rely upon the decision of this Court in the case of *Marye* v. *Baltimore & Ohio R. R. Co.*, 127 U. S., 117. In that case the tax sought to be imposed on the rolling stock of the Baltimore & Ohio Co.,—a corporation of Maryland,—by the State of West Virginia, because it was habitually used interchangeably in Maryland and West Virginia, was held invalid simply because the statute of West Virginia had no application to rolling stock owned by any *foreign corporation*. The Court held in substance, that West Virginia might have taxed the *average amount of rolling stock* of the Baltimore & Ohio R. R. Co. *habitually used in West Virginia*, on the ground that the *situs* of such rolling stock *habitually used in West Virginia*, would be in West Virginia, regardless of the domicile of its owner.

We certainly do not question the soundness of that proposition; in fact it is exactly the principle which should be applied to the assessment of the rolling stock of all *interstate railways;* it is the *lack* of this principle that makes the law here under discussion unconstitutional as to assessment of "rolling stock;" but even in so holding, Mr. Justice Matthews was careful to say:

"Of course the lawfulness of a tax upon vehicles of transportation used by common carriers might have to be considered in particular instances with reference to its operation as a regulation of commerce among the states."

Another decision cited and much relied on by

counsel for defendants in error, was the decision of this Court in *Massachusetts* v. *The Western Union Telegraph Company*, 141 U. S., 40.

In that case the tax imposed was an *excise tax* against the *corporation*, measured by a percentage upon a part of its capital stock; the *amount* of the excise tax was ascertained by deducting from the entire mileage of the company in all the States, the entire mileage outside of Massachusetts: then such a proportion of the capital stock of the company was subjected to percentage for the *excise tax* as the length in Massachusetts bore to the entire length,—after again deducting from the amount so found, the entire value of all the company's tangible property in Massachusetts.

The decision of this case brought in review the decision in *Western Union Telegraph Co.* v. *Attorney General of Massachusetts*, 125 U. S., 530. In the opinion Mr. Justice Gray states positively that the taxes considered in *both* cases were *excise taxes*, the language used is as follows:

"These cases cannot be distinguished from that of *Western Union Telegraph Co.* v. *Attorney General of Massachusetts*, 125 U. S., 530, in which the validity of similar taxes was upheld in a judgment delivered by Mr Justice Miller with no dissent. * * *

"By whatever name the tax may be called, as described in the laws of Massachusetts, it is essentially *an excise tax* upon the capital of the corporation; and those laws attempt to ascertain the just amount which any corporation engaged in business within its limits shall pay as a contribution to the support of its government upon the amount and value of the capital so employed by it therein."

Hence the decisions can have no application to the cases at bar.

The decision most relied upon by counsel for defendants in error, in their argument in the State Court on the point now under discussion, was the decision of this Court in *Pullman's Palace Car Co.* v. *Pennsylvania*, 141 U. S., 18. That decision was rendered by a divided Court after a second hearing; *Justices Bradley, Field and Harlan* dissenting. The case involved the taxation in Pennsylvania of the sleeping and parlor cars of the Pullman Co. used on through, interstate lines of railway extending from points in the West across or into the State of Pennsylvania.

In the majority opinion it is assumed that a number of Pullman cars would be each day on the through lines in Pennsylvania, in the same proportion that the mileage of the road in Pennsylvania bears to the entire mileage of the entire interstate lines over which the Pullman cars were operated. And that, therefore, it was fair and just to ascertain and measure the number of Pullman cars that should be taxed in Pennsylvania by the application of the proportional mileage basis. It is somewhat difficult to distinguish this decision from the decisions in *Massachusetts* v. *The Western Union Telegraph Co., supra*; *The Delaware Railroad Tax, supra*; and *Maine* v. *Grand Trunk Railway Co., supra*, in each of which the proposed tax was held and decided to be an *excise tax* and not a *property tax*. But in the majority opinion Mr. Justice Gray states that the tax in this case is not a license tax or a privilege tax, but is a tax upon the property of the Pullman Co. in Pennsylvania. Even when so regarded it seems clear that it has but little application to the cases at bar, and is easily distinguished from them.

First. This decision had reference wholly and only to the taxation of transitory personal property in and by a State other than the State of the domicile of its owner.

Second. It is plain that this decision can have no possible application to the assessment of the "RAILROAD" of the P. C. C. & St. L. Ry. Co. situated in Indiana. It certainly furnishes no support whatever to the addition by the State Board of large amounts, to the true cash value of that railroad BECAUSE it is owned and used by an interstate corporation possessed of a large business, good business ability, large earning capacity and other valuable railways OUTSIDE of Indiana.

Third. As to the assessment of "rolling stock" of the P. C. C. & St. L. Ry. Co., this decision is readily distinguished both in fact and in principle from the system of assessment required by this Indiana law and applied by the State Board in the P. C. C. & St. L. Ry. Co. case. In the *Pullman case* there was no question regarding *entire equipments* of great value that were *never used or needed* on the road in Pennsylvania. On the contrary the consideration and decision included and took into account *only the equipment of Pullman cars used on the through interstate lines of railway* in the United States regarded as a unit system, part of which was in Pennsylvania.

Fourth. This decision can have no possible application to the assessment of the "railroad" of the I. & V. R. R. Co., which is a local road wholly in Indiana. Counsel for defendants in error will search this decision in vain for any possible support for the action of the Indiana State Board in largely INCREASING its assessment of this local "railroad" simply *because* the Pennsyl-

vania Company,—a foreign corporation largely engaged in interstate transportation of commerce,—IS ITS LESSEE.

In the dissenting opinion in *Pullman's Palace Car Co. Case*, *supra*, Mr. Justice Bradley made some pertinent statements to which the attention of the court is earnestly invited. He said:

"Reference is also made to expressions used in the opinion in *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196, which, standing alone, would seem to concede the right of a State to tax foreign corporations engaged in foreign and interstate commerce, if such property is within the jurisdiction of the State. But the whole scope of that opinion is to show that neither the *vehicles* of commerce coming within the State, nor the *capital* of such corporations, is taxable there; but only the property having a *situs* there, as the wharf used for landing passengers and freight. The entire series of decisions to that effect are cited and relied on. * * *

"The case of *Western Union Telegraph Company* v. *Massachueetts*, 125 U. S., 530, is entirely different from the present. In that case there was no question as to the situs of the property taxed. It was situated within the State, consisting of poles, and wires, and offices and a general plant for telegraphic purposes. The property belonged in Massachusetts, and was consequently taxable there. There was a phase of that case which led some of the Justices of the Court to doubt as to the proper decision to be made. The difficulty was this: The tax was, in terms, made upon a certain proportional part of the capital stock of the company. That proportion was regulated by the number of miles of telegraph within the State, as compared with the number of miles of telegraph belonging to the company

in the whole country. It was objected that the property of the company situated in Massachusetts had no necessary relation to the said proportion of the capital stock; because the aggregate value of the stock might depend on property, franchises and amount of business outside of Massachusetts, largely out of proportion to the miles of telegraph lines outside of that State. But the difficulty of getting at the true value of the property within the State, and of adopting any other rule for ascertaining it, *as well as the failure of the Company to show that the rule adopted produced any unfair results*, finally induced an acquiescence in the decision; but expressly on the ground that though the tax was nominally on the shares of the capital stock of the Company, it was in effect a tax upon the property owned and used by it in Massachusetts, the proportional length of the lines in that State to their entire length throughout the whole country being merely used as the basis for ascertaining the value of that property. * * *

"In the case of *Western Union Telegraph* v. *Massachusetts*, the tax was sustained only on the ground that it was a tax on the property *in* Massachusetts. The idea that the *capital stock*, as such, could be taxed was repudiated. The State can no more tax the capital stock of a *foreign corporation* than it can tax the capital of a foreign person."

These plaintiffs in error in these cases now before this Court have shown that this pretended law, and its administration by the State Board, *have produced unfair and enormously unjust and oppressive results.*

These plaintiffs in error, in view of the reasons and authorities herein above given, ask this Court to hold

the Act of March 6, 1891, unconstitutional; and to hold the assessments of the railroad property of these plaintiffs made by the State Board of Tax Commissioners at its session in 1891, invalid and void, because:

1. Said Act denies to these plaintiffs "due process of law."

2. Said Act denies to these plaintiffs "the equal protection of the laws."

3. The administration of said Act results in imposing taxes upon interstate commerce.

Wherefore plaintiffs ask that the decision and judgment of the Supreme Court of Indiana may be in all things reversed.

Respectfully submitted,

JOHN M. BUTLER,
Attorney for Plaintiffs in Error.

S. O. PICKENS,
ALPHEUS H. SNOW,
JOHN M. BUTLER, JR.,
Of Counsel.

Indianapolis, Ind., September 27, 1893.

AN ACT

CONCERNING TAXATION

FOR THE

ASSESSMENT * OF * PROPERTY

IN THE

STATE OF INDIANA

AND FOR THE

LEVY AND COLLECTION OF TAXES.

Approved March 6th, 1891.

INDIANAPOLIS:
1891.

LAWS OF TAXATION.

AN ACT concerning taxation, repealing all laws in conflict therewith, and declaring an emergency.

SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all taxes for the support of the government of this State shall be assessed on polls and on property listed and valued in an equal and ratable proportion (except such stocks and other property as may be specifically taxed) in the following manner, namely: The amount necessary and proper to be charged on each poll and on each hundred dollars' worth of property, for State expenditures and for school purposes, shall, from time to time, be fixed by law; and the amount to be charged on each poll and on each one hundred dollars' worth of property for county expenditures shall be determined by the Board of County Commissioners at their annual meeting in September. **Polls and property to be assessed.**

SEC. 2. A poll-tax shall be assessed upon every male inhabitant of this State between the ages of twenty-one and fifty years, and every person shall be listed for his poll-tax in the township, town or city of his residence. **Poll tax.**

SEC. 3. All property within the jurisdiction of this State, not expressly exempted, shall be subject to taxation. **What property taxable.**

SEC. 4. For the purpose of taxation, real property shall include all lands within the State, and all buildings and fixtures thereon and appurtenances thereto, except in cases otherwise expressly provided by law; personal property shall include all goods and chattels within the State, all ships, boats and vessels belonging to inhabitants of this State, whether at home or abroad, and their appurtenances; all goods, chattels and effects belonging to inhabitants of this State, situate without this State, except the property actually and permanently invested in business in another State shall not be included; all indebtedness due to inhabitants of this State above the amounts respectively owed by them, whether such indebtedness is due from individuals or from corporations, public or private, and whether such debtors reside within or without the State; all shares in corporations organized under the laws of this State, **Realty defined.** **Personalty defined.**

when the property of such corporation is not exempt or is not taxable to the corporation itself; all shares in banks organized in this State under any law of the United States, but in estimating the value of such shares, deduction shall be made of the value of all real estate taxed to the bank; all shares in foreign corporations, except national banks, owned by inhabitants of this State; all moneys; all annuities, and royalties; all interests owned by individuals in lands the fee of which is in this State or in the United States, except as hereinafter provided. Property exempted from taxation by the laws of the United States shall not be included. Shares in corporations, all the property of which is taxable to the corporation itself, shall not be assessed to the shareholder. Lands sold by the State, including lands forfeited to the sinking fund, university fund, and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed. All lands reserved to or for any individual by any treaty between the United States and any Indian tribe or nation shall be liable to taxation from the time such treaty shall have been confirmed.

Lands sold by State though not conveyed, taxed.

Land reserved by the U. S., taxed, when.

Property exempt from taxation.

SEC. 5. The following property shall be exempt from taxation:

First. The property of the United States and of this State.

Second. The property of any county, city, town or township.

Third. All lands granted for the use of the common schools, so long as the same shall remain unsold.

Fourth. The personal property and real estate of every manual labor school or college incorporated within this State, when used or occupied for the purpose for which it was incorporated, such real estate not to exceed three hundred and twenty acres.

Fifth. Every building used and set apart for educational, literary, scientific or charitable purposes by any institution, or by any individual or individuals, association or incorporation, or used for the same purpose by any town, township, city or county, and the tract of land on which such building is situate, also the lands purchased with the *bona fide* intention of erecting buildings for such use thereon, not exceeding forty acres; also the personal property, endowment funds and interest thereon, belonging to any institution, town, township, city, or county, and connected with, used or set apart for any of the purposes aforesaid.

Sixth. Every building used for religious worship and the pews and furniture within the same, and also

the parsonage attached thereto and occupied as such, and the land whereon said building or buildings are situate, not exceeding ten acres, when owned by a church or religious society, or in trust for its use, also every cemetery.

Exception.

SEC. 6. If all or any part, parcel or portion of any tract or lot of land, or any buildings or personal property enumerated in the preceding section as exempt from taxation, shall be used or occupied for any other purpose or purposes than those recited in said section, by reason whereof they are exempted from taxation, such property, part, parcel or portion shall be subject to taxation so long as the same shall not be set apart or used exclusively for some one of the purposes specified in said enumeration.

Property destroyed; rebate.

SEC. 7. In all cases where buildings or personal property shall be destroyed, in whole or in part, by unavoidable casualty, after being assessed for the year, and such loss is not covered by insurance, the County Auditor shall, upon sworn proof of such loss, allow a rebate of such proportion of the taxes for that year as that part of the year which shall remain, after such destruction, bears to the whole year.

Personal listed, when.

SEC. 8. Personal property shall be listed for taxation between the first day of April and the first day of June, each year and with reference to the quantity and quality held or owned on the first day of April, in the year for which the property is required to be listed.

Owner on April 1st.

SEC. 9. The person purchasing or acquiring property, whether real or personal, on the first day of April, in any year, shall be considered as the owner on that day and shall be assessed and liable for the taxes of that year.

Executor or administrator.

SEC. 10. If a person die after the first day of April, in any year, without having given in the amount of his taxables his executor or administrator, heir at law, or other person having charge thereof, shall give in the same as though such property had been in his possession on the first day of April of such year.

Personal, assessed where.

SEC. 11. All personal property shall be assessed to the owner in the township, town or city, of which he is an inhabitant on the first day of April of the year for which the assessment is made, with the following exceptions:

Exception.

First. All goods and chattels situated in some township, town or city, other than where the owner resides, shall be assessed in the township, town or city where situated, and not elsewhere if the owner or person having control thereof hires or occupies a store, mill, dock

yard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels: *Provided*, That the procuring any such property to be manufactured upon contract, shall be deemed the hiring of a mill or manufactory, within the meaning of this section.

Second. All animals kept throughout the year in some township, town or city other than where the owner resides, shall be assessed to such owner, or the person in possession in the township, town or city where kept.

Third. All shares in banks shall be assessed to their owners in the city or town where the bank is located.

Fourth. Personal property of non-residents of the State shall be assessed to the owner or to the person having the control thereof in the township, town or city where the same may be, except that where such property is in transit to some place within the State, it shall be assessed in such place.

Fifth. The personal property of minors under guardian shall be assessed to the guardian in the township, town or city where the guardian resides, but shall not be assessed or taxed for city or town purposes unless the ward reside in such city or town, and the personal property of every other person under guardianship shall be assessed to the guardian in the township, town or city where the ward resides.

Sixth. The personal property of the estates of deceased persons in the hands of executors, administrators or other persons shall be assessed to the persons in charge of such property in the township, town or city where the deceased last dwelt, until such property has been distributed to the heirs or other persons entitled thereto. If such decedent was a non-resident of the State, such property shall be assessed in the township, town or city where situated.

Seventh. Personal property under the control of a trustee or agent, whether a corporation or natural person, may be assessed to such trustee or agent, except as otherwise by law provided in the township, town, or city in which such trustee or agent resides.

Eighth. All personal property of any person situate upon, also all buildings situate and being upon the land of the United States, or of this State, or upon the lands of any county, township, town, or city, shall be deemed personal property for purposes of taxation and assessment, and shall be assessed as personal property to the owner or occupant thereof, in the township, town or city, to which said lands belong or of which they form

a part, and such buildings shall be subject to sale for taxes in the same manner as herein provided for personal property: *Provided, however*, It shall not be necessary to remove such buildings for the purpose of sale.

Corporate property, where assessed.

SEC. 12. All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this State is situated shall be deemed its residence, but if there be no principal office in the State then such property shall be listed and taxed at any place in the State where the corporation transacts business.

Co-partnership.

SEC. 13. For the purposes of assessing property and collecting taxes, a co-partnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the tax duplicate, if such property is owned or occupied by a co-partnership, the firm name may be used. A co-partnership shall be deemed to reside in the township, town or city where its business is principally carried on. Each partner shall be liable for the whole tax.

Personal property in transit.

SEC. 14. Personal property *in transitu* shall be listed and assessed in the township, town or city where the owner resides: *Provided*, That if such property is intended for a particular business, it shall be listed and assessed at the place where the property of such business is required to be listed and assessed.

Water craft.

SEC. 15. All persons, companies and corporations in this State owning or controlling steamboats, sailing vessels, wharf-boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, township, town or city in which the same may belong, or be enrolled, licensed or registered, or kept when not enrolled, licensed or registered.

Bankers, brokers, stock jobber, etc.

SEC. 16. The personal property of banks or bankers, corporate or unincorporated, brokers, stock jobbers, insurance companies, hotels, livery stables, saloons, eating houses, ferries and mining companies, and all companies except companies specially provided for in this act, shall be listed and assessed in the township, town or city where such personal property is situated.

Gas, water and hydraulic companies.

SEC. 17. The personal property of gas and coke companies, natural gas companies, electric light companies, water works companies, and hydraulic companies shall be listed and assessed in the township, town or city where the principal works are located; the mains, pipes and wires of such companies laid in or along roads, streets or alleys shall be listed as personal

property in the township, city or town where the same are laid or placed.

Street railroad, road and bridge companies.

SEC. 18. The personal property of street railroad, plank road, gravel road, turnpike or bridge companies shall be listed and assessed in the township, city or town where the principal place of business is located. The track, road or bridge of such company shall be held to be personal property, and shall be listed and assessed in the township, town or city where the same is located or laid.

Agents' list separate from own.

SEC. 19. Persons required to list property on behalf of others shall list it separately from their own, specifying in such case the name of the person, estate, company or corporation to whom it belongs.

Removing from one township to another.

SEC. 20. The personal property of persons removing from one county, township, town or city to another, between the first day of April and the first day of June, in any year, shall be listed and assessed in either place in which the owner is first called upon by the Assessor. The owner of personal property moving into this State from another State, between the first day of April and the first day of June, in any year, shall be listed for his poll and the property owned by him on the first day of April of such year, in the county, township, town or city into which he has so removed: *Provided*, That if such person has been assessed, and shall make it appear to the Assessor by the certificate of the proper authority in the place of his former residence, that he is held for tax for the current year in such former place of residence, he shall not again be assessed for such year.

Doubt, how settled.

In case of doubt as to the proper place to assess personal property, if the doubt arises as to different townships in the county, the Auditor shall determine the place; and if the doubt arises as to different counties, the Auditor of State shall determine, such determination shall be summary and final.

Realty, where and how assessed.

SEC. 21. Real property shall be assessed in the place where situated, and to the owner, if known; if not, then to the occupant, if any; and if there be no occupant, then as unknown. Property in the control of an executor, administrator, guardian or trustee shall be assessed to such executor, administrator, guardian or trustee.

Sale of exempt realty.

SEC. 22. When real estate is exempt from taxation in the hands of the holder of the fee and the same is contracted to be sold, the amount paid thereon by the purchaser, with the value of the improvements thereon until the fee is conveyed, shall be held to be personal property, and be listed and assessed as such in the place where the land is situated.

Nursery stock

SEC. 23. The stock of nurseries, growing or otherwise, in the lands of nurserymen shall be listed and assessed as merchandise.

Deed held for security.

SEC. 24. When the deed for real estate is held for the payment of a sum of money, such sum so secured shall be held to be personal property, and shall be listed and assessed as credits.

Franchise.

SEC. 25. Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property.

Interest on exempt securities.

SEC. 26. Where bonds or stocks are now or may hereafter be exempted from taxation, the accrued interest on such bonds or dividends on such stocks shall be listed and assessed, unless otherwise exempted, without regard to the time when the same is to be paid.

Personalty mortgaged.

SEC. 27. When personal property is mortgaged or pledged, it shall, for the purpose of taxation, be deemed the property of the person who has the same in possession.

Realty mortgaged.

SEC. 28. In cases of mortgaged real estate the mortgagor shall, for the purpose of taxation be deemed the owner until the mortgagee shall have taken possession of the mortgaged premises, after which the mortgagee shall be deemed the owner.

Merchants, consignees.

SEC. 29. Every person who shall own or have in possession, or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased either in or out of this State, with a view of being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State for the purpose of being sold, at any place within this State, shall be held to be a merchant; and at any time when he shall be, in pursuance of this act required to make out and deliver to the Assessor a statement of his other personal property, he shall, in like manner, make a statement of and list as merchandise all property held or owned by him appertaining to his business as a merchant, and, in addition thereto, attest, on oath or affirmation, the true cash value of all such property appertaining to his business as a merchant, including, with amount on hand, in actual possession, all amounts purchased, with a view to possession or profit.

Manufacturers.

SEC. 30. Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof, by any process of manufacturing, refining, rectifying, or by the com-

bination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall at all times, when, by virtue of this act he is required to, make and deliver to the Assessor a statement of the amount or value of his other personal property subject to taxation; also, in like manner, state the value estimated, as provided in the preceding section, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining, including the value of all manufactured articles on hand in actual possession or elsewhere held for sale, and, in addition thereto attest on oath the true cash value of all such property appertaining to his business as a manufacturer, including manufactured articles.

Transient persons.

SEC. 31. Whenever, at any time during any year, any transient person shall locate in any township, city, town or village, and shall offer to sell or otherwise dispose of any books or other goods, wares or merchandise, under the name of a gift book store or any other name or designation, it shall be the duty of the proper Assessor for the time being, of the place where such person shall locate, forthwith to call upon such person and demand of him the true value in money of all his stock in trade; and in case such person shall neglect or refuse to return the same under oath within twenty-four hours after such demand, then it shall be the duty of said Assessor to determine the same as in other cases; and in either case he shall forthwith return such valuation to the Auditor of the county, who shall cause the same to be entered at once on the tax duplicate and collected immediately.

Engines and machinery.

SEC. 32. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list as a part of his personal property, the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing (except such fixtures as shall have been considered as a part of any tract, or real property), including all the tools and implements of every kind used for the purpose aforesaid.

Pawnbroker.

SEC. 33. Every person or company engaged in the business of receiving property in pledge or as security for money or other thing advanced to pawner or pledger, shall be held to be a pawnbroker, and shall, at the time required by this act, return under oath the value of all property pledged and held by him as a pawnbroker on hand on the first day of April annually, and taxes shall

be charged upon the true cash value of such property to such pawnbroker, the same as other property.

Inspecting books, papers, etc.

SEC. 34. For the purpose of properly listing and assessing property for taxation and equalizing and collecting taxes, the Township Assessor, County Assessor, County Auditor, Auditor of State, Boards of Review and Board of Tax Commissioners shall each have the right to inspect and examine the records of all public offices, and the books and papers of all corporations and taxpayers in this Sate, without charges; and they shall also have power to administer all necessary oaths or affirmation in the discharge of their duties; and it shall be the duty of all Assessors, and all other officers charged with the duty of listing property for taxation, or charged with the duty of collecting taxes, to give in writing all information they may acquire in reference to the concealment of property from taxation by any person or corporation before mentioned to the County Auditor, Auditor of State, or to the Boards of Review or Tax Commissioners.

Leasehold estate.

SEC. 35. When real estate which is exempt from taxation, is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate, and the appurtenances shall be listed as the property of the lessee thereof or his assignee, as real estate.

Public lands.

SEC. 36. Government lands, canal lands, university and school lands, purchased prior to the first day of April, shall be taxable for that year and annually thereafter. All school lands heretofore or hereafter sold shall be taxable from and after the sale and delivery of the certificate.

Wabash and Erie Canal.

SEC. 37. All mills, manufactories, warehouses and other structures, with appurtenances and fixtures erected or placed upon any lands leased by the Board of Trustees of the Wabash and Erie Canal, shall be assessed to the lessees of such lands or their assigns, in possession of and occupying the same; but the lands or lots on which such mills, manufactories, warehouses or other structures are situate, shall be assessed to the owners thereof, and all locks, lands, dams, feeders, mill sites and water power and canal bed, with land appurtenant thereto, shall be assessed to the owners of said Wabash and Erie Canal, and for the purpose of valuation, the entire property in any township, shall be considered as an entirety, and shall be described in the assessment and in the tax duplicate as "The Wabash and Erie Canal." All the above described property shall be taxable from and after the sale of said property

under the decree of the United States Circuit Court, in the case of Thomas K. Gapen *v.* Thomas Dowling et al. Nothing herein contained shall, in any way, prevent or interfere with the assessment of so much of said property as may lie in any city or town, by the city or town authorities, for taxation for municipal purposes.

Undivided realty.

SEC. 38. The undivided real estate of any deceased person, not in control of an executor or administrator, may be listed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the Auditor of the county or counties in which such real estate is situated, of the division of the same and the names of the several heirs or devisees, and the proportions allotted to each, and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof, when paid by him, and interest thereon, and the lien for the proportion of taxes paid on the different shares of the land shall vest in the person who pays the taxes.

Division or partition.

SEC. 39. Whenever a division or partition has been made, or other changes take place in the ownership of any tract or lot of land, or any part thereof, by conveyance, sale, devise, or descent, the County Auditor on being satisfied thereof, shall transfer the same on the last appraisement list, and apportion the same, and the valuation thereof, with all delinquent taxes, to the several owners.

Owner or occupant.

SEC. 40. Lands occupied by any person, not the owner thereof, shall be listed in the name of the owner, if known, otherwise as the lands of unknown owners; and, for taxes, if paid by any occupant, he shall have his action against the owner, and a lien upon such lands until the same, with interest, is repaid to him.

When in two townships.

SEC. 41. When the lines between two townships divide a tract of land surveyed differently from the congressional surveys, if listed to the owner thereof, he being a resident of either township in which a part of such tract of land may lie, or if listed to the occupant under the preceding section of this act, the same shall be listed in the township in which such owner or occupant resides; and in all other cases, the same shall be listed in the township in which the greater part thereof lies.

Description of realty.

SEC. 42. Whenever the real estate to be listed and assessed can not be described by a congressional subdivision, or by the number of lot or plat, the same shall be sufficiently described for the purpose of listing, as-

sessing, collecting the tax thereon, and conveying the title thereto, when the same is sold for non-payment of taxes, by reference to any sufficient and intelligible description of such land, or lot, in the deed, mortgage, will, or other public record of the county, substantially in the following manner, the number of acres, book and page, and place being changed to suit each particular case:

"Fifty acres in survey No. 158, of Clark's grant, as described in deed book 64, page 219, of the Recorder's office of Clark County," and when no sufficient and intelligible description of such real estate can be obtained for such reference by the Assessor or other officer listing such land, from the owner or public records of the county, such officer shall cause the County Surveyor to survey and plat such land and furnish him with such description; and a reference to such description in such survey, substantially in the following manner, shall be sufficient description of such land for the purposes above mentioned:

"Fifty acres in survey No. 100, of Clark's grant, as designated on the plat thereof made by the County Surveyor, on the —— day of ————, 18—."

The cost of such survey shall be entered by the Auditor on the tax duplicate, and collected as a part of the tax on said land. It shall be sufficient to describe the real property assessed in the manner heretofore in use by initials, letters, abbreviations and figures.

Lots and subdivisions.

SEC. 43. Whenever any tract of land has been platted into lots or subdivisions the description of any such lot or subdivision by reference to its number on said plat, and the number or designation of the plat, shall be a good, valid and sufficient description thereof, for the purpose of listing, assessing, collecting the tax thereon, and conveying the title thereto, when sold for the non-payment of taxes.

Description of personalty.

SEC. 44. In entering personal property upon the proper tax books for the purpose of taxation, it shall be a sufficient description of the same to use the words "personal property," and such phrase shall comprehend and embrace all species of personal property belonging to the party charged therewith, on the tax books, and no more specific description or designation thereof shall be necessary.

Affidavit of taxless person.

SEC. 45. Any person who, being called upon to list property, either on his own account or for others, subject to taxation, claims to have none, shall be required by the Assessor or other proper officer to make oath in writing to the truth of his claim in that behalf, and

proper blank forms for such affidavit shall be provided, and such person shall be subject to the pains and penalties of perjury for a false oath.

"Person" defined.

SEC. 46. The word "person," as used in this act, shall be held to include and mean "firm," "company," "association," or "corporation."

Dogs.

SEC. 47. The Assessor shall list every dog over the age of six months within his township to the person owning, keeping or harboring the same, and such person shall be charged on the duplicate one dollar if a male, and two dollars if a female dog, and the further sum of two dollars for each additional dog, beyond one; which amounts so charged shall be carried to the column of total amounts, and collected as other taxes are collected: *Provided*, That nothing in this act shall be so construed as to repeal or modify any of the provisions of an act to provide for the taxation of dogs, etc., in force March 7, 1883, and an act to amend section 8 of said act of March 7, 1883, approved April 8, 1885, both of which acts shall remain in full force and effect.

Blanks for listing property.

SEC. 48. On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the Assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such Assessor a full and correct description of all the personal property, of which such person was the owner on the first day of April of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such Assessor, who shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or of any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the market or usual selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value.

Values, how determined.

In making the valuation, annuities and royalties shall be valued at their present cash value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the Assessor. Valuation of annuities and royalties.

SEC. 49. The person called upon or required by the Assessor to list property shall answer, in writing, under his signature, the following interrogatories, under oath, upon the proper blank form thereof, to be furnished by the Assessor, who shall also administer the oath: Interrogatories to be answered.

Interrogatory One. Are you or were you, on the first day of April, of the present year, the executor of the last will, or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent or attorney or banker, investing, loaning or otherwise controlling the money or other property of any other person, resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then or are now acting in such representative or fiduciary capacity, and if you were, or are now, acting under the authority of any particular Court, name the Court, and also state to what Court you report.

Interrogatory Two. Have you, before the first day of April of the present year, either personally or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange or in any other manner, into United States notes not taxable, commonly called "greenbacks," or bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement for the purpose of evading the payment of taxes on such property, or did you on or after the first day of April of the present year, and before you saw this interrogatory, pay back, return or re-exchange or sell back such property for the purpose aforesaid?

Interrogatory Three. If you have converted any of your money or property or money or property of any other person as inquired of you, then state when the same was so converted or invested and the kind and the amount or value thereof.

A space shall be left on the blank under each interrogatory, for the answer to the same.

Account of property required to be set forth.

SEC. 50. Every person required by this act to make or deliver such statement or schedule shall set forth an account of the property held or owned by him, as follows:

PERSONAL PROPERTY—CREDITS.

First. All annuities and royalties.

Second. All bonds, notes, mortgages, accounts, demands, claims, and other indebtedness owing to such person, whether such indebtedness is owing from individuals or from corporations, public or private, and whether such debtors reside within or without the State, including all deposits in banks or with other corporations or with individuals.

Third. All *bona fide* indebtedness owing by such person.

PERSONAL PROPERTY—CHATTELS.

First. All shares in banks organized in this State under any law of this State, or of the United States, and their full market value, after deducting the value of the real estate as taxed to the banks.

Second. All shares in foreign corporations, other than banks, and their value.

Third. All shares in other corporations organized under the laws of this State, when the property of such corporation is not exempt by some law, or is not taxable to the corporation itself, and the cash value of such shares.

Fourth. All moneys.

Fifth. The value of all gold and silver plate, watches, diamonds and jewelry.

Sixth. The value of all household furniture and musical instruments.

Seventh. All patent rights, describing them, and giving the number of each patent, and the value of each.

Eighth. The number and kinds of domestic animals and their value.

Ninth. All wagons, carriages and sleighs and their value.

Tenth. All mechanical and agricultural implements and tools, and their value.

Eleventh. All machinery not affixed to real property and its value.

Twelfth. All ships, boats and vessels, whether at home or abroad, and their value.

Thirteenth. All merchandise and stock in trade and its value.

Fourteenth. All logs, timber, lumber, posts, ties, cordwood, staves, or other felled or cut timber, and the value.

Fifteenth. All other goods, chattels and personal property, not heretofore specifically mentioned, and their value, except property specifically exempt from taxation.

Failure to make statement, or making incorrect statement; Assessor's duty.

SEC. 51. In every case where any person shall neglect or refuse to make out and deliver a sworn statement of his property to the Assessor as required by this act, or if the Assessor shall be in doubt whether such statement is correct, such Assessor is hereby authorized and required to examine on oath any other person whom he believes to have knowledge of the amount or value of any property owned or held by such person so neglecting or refusing; and such Assessor is authorized to set down and assess to such person such amount of personal property as he may deem just.

Property converted to escape taxation to be listed.

SEC. 52. Whenever, from the answer to the second interrogatory on the schedule, and from the evidence before him, the Assessor is satisfied that the person required to list his property has, since the 1st day of April of the preceding year, temporarily converted any part of his property into property not taxable, for the purpose of preventing such property from being listed and of evading the payment of taxes thereon, such Assessor shall cause such property to be assessed at its true cash value.

When Auditor to have books ready for Assessor.

SEC. 53. Before the first day of April of each year the County Auditor shall have in readiness for delivery to the Assessor the proper assessment books and necessary blanks for the assessment of all property, real and personal. The schedule, with affidavits thereto attached, to be signed by the party, shall be in the following form, the names and places being changed to suit each person: The words "value," "cash value," "true value" or "valuation," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which such term or terms are applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale. The party shall write the word "none" after each item whenever he has no property to assess as named in such item, and no item shall be passed without being answered.

Form of Property list.

SCHEDULE

Of all property held by....., of .....Township, ...County, Ind., on the 1st day of April, 189...

Form of property list.

PERSONAL PROPERTY—CREDITS.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
1	All annuities ..... $		
2	All bonds ..... $		
3	All notes secured by mortgage ..... $		
4	All other notes ..... $		
5	All accounts ..... $		
6	All demands and claims ..... $		
7	All deposits in banks ..... $		
8	All deposits with other corporations ..... $		
9	All deposits with individuals ..... $		
10	All other amounts due me from any person or corporation ..... $		
	Total credits due me ..... $		
	From the sum of the above credits I claim a deduction of the amount of my bona fide indebtedness, to-wit:		
	Total indebtedness which should be deducted from my credits ..... $		
	Leaving balance for which I should be assessed ..... $		

PERSONAL PROPERTY—CHATTELS.

1	Money on hand or subject to my order not already entered under title of "credits"		
2	All money loaned by me and not already entered on this schedule		
3	All interest owing me not entered on this schedule		
4	All judgments or allowances in my favor, entered in any court, and which I have not already entered on this schedule; also, all legacies, bequests and other estates in expectancy		
5	All shares of stock in any corporation formed outside of this State; and also all shares of stock in any corporation formed in this State, and conducting its business outside of this State		
6	Value of goods and merchandise on hand		
7	Value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining		
8	Value of manufactured articles on hand		
9	Value of manufacturing tools, implements and machinery (other than engines and boilers, which shall be listed as such)		
10	Value of agricultural tools, implements and machinery		

SCHEDULE—Continued.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
11	Value of gold or silver plate and plated ware		
12	Value of diamonds and jewelry		
13	Value of household furniture and library		
14	Value of mechanical tools, law and medical books, surgical instruments and medicines		
15	Value of nursery stock		
16	Value of property such person is required to list as pawnbroker		
17	Value of property of companies and corporations other than property hereinbefore enumerated		
18	Value of property of saloons and eating houses		
19	Value of market garden products		
20	Value of home-made manufactures		
21	Value of slaughtered animals		
22	Every franchise and description and value		
23	Value of brick, stone and all other building material on hand		
24	Number of steamboats, sailing vessels, wharf boats, canal boats, barges, or other water craft, either within or without this State, and value		
25	Number of patent rights and value		
26	Number of steam engines, including boilers, and value		
27	Number of fire and burglar proof safes and value		
28	Number of billiard, pigeon-hole, bagatelle and other similar tables and value		
29	Number of pianofortes and other musical instruments and value		
30	Number of sewing or knitting machines and value		
31	Number of watches and clocks and value		
32	Number of carriages, wagons, coaches, hacks, carts, drays or other vehicles and value		
33	Number of hoop-poles and value		
34	Number of horses and value		
35	Number of mules, jacks and jennets and value		
36	Number of cattle and value		
37	Number of sheep and value		
38	Number of hogs and value		
39	Number of cords of wood and value		
40	Bushels of coal and value		
41	Bushels of lime and value		
42	Bushels of wheat and value		
43	Bushels of corn and value		
44	Bushels of rye and value		
45	Bushels of oats and value		
46	Bushels of potatoes and value		
47	Bushels of barley and value		
48	Bushels of grass and clover seed and value		
49	Bushels of flaxseed and value		
50	Bushels of fruit and value		
51	Tons of hay and value		
52	Tons of hemp and value		
53	Pounds of beef and value		
54	Pounds of bacon and value		

SCHEDULE—Continued.

Number.	Description of Property.	Valuation by Party.	Valuation by Assessor.
55	Pounds of bulk pork and value		
56	Pounds of lard and value		
57	Pounds of wool and value		
58	Pounds of tobacco and value		
59	Pounds of hops and value		
60	Pounds of maple sugar and value		
61	Barrels of beef and value		
62	Barrels of pork and value		
63	Gallons of cider and value		
64	Gallons of vinegar and value		
65	Gallons of wine and value		
66	Gallons of sorghum or maple molasses and value		
67	Feet of lumber and value		
68	Pounds of starch and value		
69	Pounds of feed and value		
70	Reams of paper and value		
71	Pounds of pulp and value		
72	Gallons of oils of all kinds and value		
73	Number of scales and value		
74	Number of yards of cloth and value		
75	Number of yards of flannel and value		
76	Number of blankets and value		
77	Pounds of yarn and value		
78	Tons of ice and value		
79	Number of threshing machines and value		
80	Number of corn shellers and value		
81	Value of logs, timber and all other property, not specified above, required to be listed		
82	Male dogs owned or harbored by me		
83	Female dogs owned or harbored by me		

TO THE ASSESSOR.

Form of special statistics.

The following is a list of all persons in my family, and belonging to my township, who are deaf and dumb, blind, idiotic, or insane, with their names, ages and sex, and also the name of the father, mother or guardian, and their postoffice address:

Name.	Age.	Sex.	Whether Deaf and Dumb, Blind, Idiotic or Insane.	Name of Father, Mother or Guardian.	Postoffice Address.

STATE OF INDIANA,.....COUNTY, SS:

I,....., being duly sworn, say, to the best of my knowledge, information and belief, the foregoing statement contains a true, full and complete list of all property held or belonging to me, and dogs owned, kept or harbored by me, on the first day of April, including all personal property, appertaining to merchandising, whether held in actual possession or only having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles, whether on hand or owned by me. In all cases where I have been unable to exhibit certain classes of property to the Assessor, such property has been fully and fairly described, and its true condition and value represented. That I have in no case sought to mislead the Assessor, as to either quantity or quality or value of property, and that the deductions claimed from credits are *bona fide* debts for a consideration received and do not consist in any part in bonds, notes or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscription to any literary, scientific or charitable institution or society, nor on account of any subscription to, or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of April of last year, I have not directly or indirectly, converted or exchanged any of my property temporarily, for the purpose of evading the assessment thereof for taxes, into non-taxable property, or securities of any kind. Form of oath to property list.

I further swear that I have to the best of my knowledge and judgment valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained for said property at private sale, and not at forced or auction sale.

.....

Subscribed and sworn to before me this.....day of ....., 189...

....., Assessor.

By....., Deputy.

SEC. 54. It shall be the duty of the Assessor at the time of assessing property to ascertain and set down in tables prepared for that purpose, a list of all persons in their respective townships who are deaf and dumb, blind, idiotic or insane, setting forth the name, age and sex of each, also the names of the father, mother or guardian, and their postoffice address, and in addition the Assessor of the township wherein the county poor house is located shall set down the number of the incurably insane who are kept therein, which list they shall return to the County Auditor at the same time they return the list of property. The said County Auditor shall report the same to the Chief of the Bureau of Statistics at the time of making their returns of the list of property; and said Chief shall lay before the Superintendents of the Institute for the Education of the Blind, the Insane, Feeble-Minded and of the Deaf and Dumb copies of the lists so made. Mutes, blind, insane list.

SEC. 55. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall willfully fail or refuse to deliver to the Assessor, when called on for that purpose, a list of the taxable property which he is required to list under False statement, penalty.

this act, or shall temporarily convert any part of his property into property not taxable for the fraudulent purpose of preventing such property from being listed and of evading the payment of taxes thereon, he or it shall be liable to a penalty of not less than fifty dollars nor more than five thousand dollars, to be recovered in any proper form of action in the name of the State of Indiana, on the relation of the Prosecuting Attorney. The Assessor shall forthwith notify the Prosecuting Attorney of such delinquency or offense, and he shall prosecute such offender to final judgment and execution, and such fine when collected shall be paid into the County Treasury for the use of the county, and the Prosecuting Attorney shall receive ten per centum commission of all moneys so collected and paid in, and a docket fee of ten dollars, to be taxed and collected with costs in such actions. Absence from the township during the sixty days without design to avoid the listing, or sickness during such period shall be a sufficient defense to such prosecution.

Valuation by Assessor.

SEC. 56. In every case where any person shall refuse to make out and deliver to the proper Assessor the statement required under this act, or shall refuse to take and subscribe to any of the oaths or affirmations required by this act, the Assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof, and for this purpose he may examine on oath any person or persons whom he may suppose to have knowledge thereof, and such Assessor shall make a note of such refusal in a column opposite the person's name, and the County Auditor shall add to such valuation when returned by the Assessor fifty per centum on the value so returned.

Penalty for refusal to answer Assessor's interrogatories.

SEC. 57. If any person required by the Assessor to give evidence, as provided in the preceding section, or in any case when interrogated by the Assessor as to any property real or personal, of himself or others, shall refuse to be sworn or affirm, or if having been sworn or affirmed, he shall refuse to answer the interrogatories hereinbefore set out, or any other questions touching the subject of inquiry such person upon conviction thereof shall be fined in any sum not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail not exceeding six months.

Failure to make statement by reason of sickness or absence.

SEC. 58. When any person shall have been prevented from making and verifying his statement by reason of sickness or absence from the county during the sixty

days, and the Assessor shall have made a statement for him, he may at any time before the assessment of taxes thereon by the County Auditor, make, verify and file with the County Auditor the proper statement; but in such cases before the Auditor shall receive such statement the person making the same must add to the ordinary affidavit a statement to the effect that his failure to give to the Assessor such statement was occasioned by his sickness or absence, and if from absence, that such absence was without design to avoid the listing of his property, and on the filing of such statement the Auditor shall correct the statement made by the Assessor. Proceedings.

SEC. 59. Every company, association or person not incorporated for banking purposes under any law of this State or the United States, who shall keep an office or other place of business, and engage in the business of lending money, receiving money on deposit, buying or selling bullion, bills of exchange, notes, bonds, stocks or other evidences of indebtedness, with a view to profit, shall between the first day of April and the first day of June of each year, make out and furnish to the Assessor a statement setting forth and showing with reference to the first day of April of the current year: Special statement by bankers, brokers, etc.

First. The amount of money on hand, other than United States treasury notes and the amount of money in transit.

Second. The amount of funds in the hands of other banks, bankers, brokers, or others subject to draft.

Third. The value of checks or other cash items, not included in any of the preceding items.

Fourth. The amount of bills receivable, discounted or purchased, and other credits, due or to become due, including the accounts receivable and interest accrued, but not due, and interest due and unpaid and all notes secured by mortgage; also, the value of such bills receivable, notes and other credits.

Fifth. The amount of bonds and stocks of every kind, and shares of capital stocks of joint stock, or other companies or corporations, held as an investment or any way representing assets, showing those that are exempt from taxation, if any, and also those subject to taxation and the amount of each; also the value of such bonds, stocks and shares.

Sixth. All other property appertaining to said business, other than real estate, (which real estate shall be listed and assessed as other real estate is listed and assessed under this act).

Seventh. The amount of all deposits. The aggregate amount of the first, second and third items in the said statement shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this act. The amount of the seventh item shall be deducted from the aggregate amount of the fourth item of said statement, and the value of the remainder, if any, shall be listed as credits.

Shares of capital stock, rating of.

SEC. 60. The shares of capital stock in any bank located within this State, whether organized under the laws of this State or of the United States, shall be assessed to the owner thereof in the township, city or town, where such bank or banking association is located and shall be taxed at the same rate as other personal property in the same locality is taxed, and with reference to its value on the first day of April of the current year.

Bank statement, rules.

SEC. 61. The president, cashier or other accounting officer of such bank, or banking association shall between the first day of April and the first day of June of each year make out a statement, under oath, in duplicate, showing the number of shares comprising the capital stock of such bank, the name and residence of each stockholder, with the number of shares owned by such stockholder in such bank, and shall affix what he deems the true cash value of each of said shares, and also, the true cash value of the entire capital stock of such bank, or banking association, on the first day of April, and shall deliver one of such statements to the Assessor in the township wherein such bank or banking association is located, and the other to the County Auditor and such capital stock shall thereupon be listed and assessed by the Assessor, and return thereof made in all respects the same as similar property belonging to other corporations and individuals. And whenever any such bank shall have acquired real estate or other tangible property the assessed value of such real estate or tangible property shall be deducted from the valuation of the capital stock of such bank. In making such statement of the true cash value of such shares, the credits shall be given and the *bona fide* indebtedness of such bank deducted therefrom, as in the case of individuals. The Assessor shall determine and settle the true cash value of each share of stock, after an examination of such statement, and also an examination, under oath of such officer if he deem it necessary; and in determining and fixing the true cash value of each of said shares of stock, he shall be governed by the

market or usual selling price of such stock at private sale at the place where the bank is located; and, if there is no market value, he shall determine the actual value, taking into consideration the surplus and individual profits, if any, just as he would with respect to other moneyed capital in the hands of individual citizens of the State.

Auditor to compel bank statement, when.

SEC. 62. In case of the failure or the refusal of the president, cashier, or other proper accounting officer of such bank to make and return such duplicate statements within the time aforesaid the Auditor of the proper county shall summon such officer to appear forthwith before him with the books of such bank or banking association; and said Auditor is hereby empowered to compel the attendance of said officers in obedience to such summons, and to examine them under oath and make such investigation at the expense of such bank or banking association as may enable him to obtain the information provided for in the preceding section.

Entry of valuation.

SEC. 63. The County Auditor shall enter the valuation of such capital stock on the tax duplicate of the current year and shall compute and extend taxes thereon the same as against the valuation of other property in the same township, town, or city.

Tax lien on shares.

SEC. 64. Taxes assessed upon shares of bank stock shall become a lien thereon upon the first day of April of the current year, and such lien shall be in nowise affected by any sale or transfer of such stock. Such taxes shall be paid by the owner or holder thereof, in the same manner that other individuals or corporations pay their taxes, and subject to the same penalties.

Bank to retain dividends, when.

SEC. 65. It shall be the duty of every such bank, or the managing officer or officers thereof after being notified in writing to do so by the County Treasurer to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any tax levied upon their shares of stock respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid and any officer of any such bank who shall pay over or authorize the paying over of any such dividend or dividends or any portion thereof contrary to the provisions of this section shall thereby become liable for such tax, or the bank may pay the tax due from any of its shareholders and retain the amount thereof with interest from any subsequent dividend.

Municipal taxing of banking associations not exempted.

SEC. 66. Nothing in this act shall be so construed as to exempt from taxation for municipal purposes the shares of capital stock of any bank or banking association organized under the laws of this State or the United States, but all such shares of stock may be assessed and taxed for all purposes at the same rate that other property is assessed and taxed in the same locality.

Semi-annual statement of insurance company.

SEC. 67. Every insurance company not organized under the laws of this State and doing business therein shall in the months of January and July of each year, report to the Auditor of State under oath, of the President and Secretary the gross amount of all receipts received in the State of Indiana on account of insurance premiums for the six months last preceding, ending on the last day of December and June of each year next preceding, and shall at the time of making such report pay into the treasury of the State the sum of three dollars on every one hundred dollars of such receipts, less losses actually paid within the State, and any such insurance company failing or refusing for more than thirty days, to render an accurate [account] of its premium receipts as above provided and pay the required tax thereon shall forfeit one hundred dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana on the relation of the Auditor of State in any court of competent jurisdiction, and it shall be the duty of the Auditor of State to revoke all authority of any such defaulting company to do business within this State.

Report of express company for taxation.

SEC. 68. Any joint stock association, company or corporation incorporated under the laws of any other State conveying to, from or through this State, or any part thereof, money, packages, gold, silver, plate or other articles by express or contract with any railroad company or the managers, lessees, agent, or receiver thereof not including railroad companies engaged in the ordinary transportation of merchandise and property in this State, shall be deemed to be an express company, and every such express company shall annually, between the first day of April and the first day of May, make and deliver to the Auditor of State a statement verified by the oath of the officer or agent making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company including its proportion of gross receipts for business done by such company in

connection with other companies: *Provided*, That the amount which any express company actually pays to the railroads within this State for the transportation of their freight within this State and the amount of wages paid to employes within this State and the amount paid for the purchase of tangible property within this State, may be deducted from the gross receipts of such company as above ascertained: *And, provided further*, That nothing herein contained shall release such express companies from the assessment and taxation of their tangible property in the manner that other tangible property is assessed and taxed. Such company making statement of such receipt shall include as such all sums earned or charged of the business of such preceding year whether actually received or not, such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such express company to make such statement before the first day of May it shall then be the duty of each local agent of such express company within this State annually between the first day of May and the first day of June to make out and forward to the Auditor of State a similar verified statement of the gross receipts of his agency for the year then next preceding the first day of April. When such statement is made such express company shall at the time of making the same, pay into the Treasury of the State the sum of one dollar on each one hundred dollars of such receipts. And any such express company failing or refusing for more than thirty days after the first day of June in each year to render an accurate account of its receipts in the manner above provided and to pay the required tax thereon, shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed to be recovered by an action in the name of the State of Indiana on the relation of the Auditor of State in any court of competent jurisdiction, and the Attorney-General shall conduct such prosecution; and such company, corporation, or association so failing or refusing, shall be prohibited from carrying on said business in this State until such payment is made.

Report of telegraph company for taxation.

SEC. 69. Any joint stock association or corporation engaged in transmitting to, from, through, or in this State telegraphic messages, and incorporated under the laws of any other State, shall be deemed and held to be a telegraph company and every such telegraph company shall annually between the first day of April, and

the first day of May, make and deliver to the Auditor of State, a statement verified by the oath of the officer, or agent of such company making such report, showing the entire receipts of each agent of such company doing business in this State for the year then next preceding the first day of April for and on account of such company including its proportion of gross receipts for business done by such company in connection with the lines of other companies: *Provided*, That nothing herein contained shall release such telegraph companies from the assessment and taxation of their tangible property in this State in the manner that other tangible property is assessed and taxed, such company in making statement of such receipts shall include as such all sums earned or charged of the business for such preceding year, whether actually received or not. Such statement shall contain an abstract of the amount received in each county and the total amount received for all the counties. In case of the failure or refusal of such telegraph company to make such statement before the first day of May, it shall then be the duty of each local agent of such local telegraph company within this State annually between the first day of May and the first day of June to make out and forward to the Auditor of State a similar verified statement of the gross receipts of his agency for the year then next preceding the first day of April. When such statement is made such telegraph company shall at the time of making the same pay into the Treasury of the State, the sum of one dollar on each one hundred dollars of such receipts, and any such telegraph company failing or refusing for more than thirty days after the first day of June in each year to render an accurate account of its receipts in the manner above provided, and to pay the required tax thereon shall forfeit one hundred dollars for each additional day such statement and payment shall be delayed, to be recovered by an action in the name of the State of Indiana, on the relation of the Auditor of State in any court of competent jurisdiction, and the Attorney-General shall conduct such prosecution, and such company, corporation or association so failing or refusing shall be prohibited from carrying on said business in this State until such payment is made.

Report of telephone company for taxation.

SEC. 70. Every telephone company doing business in this State and incorporated under the laws of any other State, shall annually between the first day of April and the first day of June report to the Auditor of State under oath of an officer or agent of such cor-

poration the gross amount of all their receipts in the State of Indiana for the year immediately preceding the first day of April and shall at the time of making such report, pay into the treasury of the State the sum of twenty-five cents, on every one hundred dollars of such receipts, and any such telephone company failing or refusing for more than thirty days after the first day of June to render an accurate account of such gross receipts, as above provided, and pay the required tax thereon shall forfeit ten dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the Auditor of State, in any court of competent jurisdiction, and the Attorney-General shall conduct such prosecution; and such telephone companies so failing or refusing shall be prohibited from carrying on said business until such payment is made.

Report of sleeping car company for taxation.

SEC. 71. Every joint stock association, company, or corporation, incorporated under the laws of any other State, and conveying to, from and through this State, or any part thereof, passengers and travelers in palace cars, drawing room cars, sleeping cars, or chair cars, on contract with any railroad company, or the managers, lessee, agent or receiver thereof, shall be held and deemed to be a sleeping car company; and every such sleeping car company doing business in this State shall, annually, between the first day of April and the first day of June, report to the Auditor of State, under oath of an officer or agent of such corporation, the gross amount of all their receipts within or without the State, for fares earned or business done by such company within this State, for the year then next preceding the first day of April of the current year; and in computing such gross receipts, the same shall be in the proportion that the distance traveled in this State bears to the whole distance paid for. At the time of making such report, such company shall pay into the Treasury of the State the sum of two dollars on every one hundred dollars of such receipts, and every sleeping car company failing or refusing for more than thirty days after the first day of June, to render an accurate account of such gross receipts, as above provided, and pay the required tax thereon, shall forfeit twenty-five dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana, on the relation of the Auditor of State, in any court of competent jurisdiction, and the Attorney-General shall con-

duct such prosecution, and such sleeping car companies so failing or refusing shall be prohibited from carrying on such business until such payment is made; and all railroad companies in this State, or the persons managing or operating the same, are prohibited from hauling any cars of any sleeping car company while so in default; and for each violation of this prohibition shall be liable to pay to the State of Indiana the sum of one hundred dollars, to be recovered in the proper action by the State. And it shall be the duty of the Attorney-General, at the request of the Auditor of State to prosecute all such suits.

Report of bridge and ferry company.

SEC. 72. Every bridge company and ferry company not organized under the laws of this State, and doing business therein, shall between the first day of April and the first day of June of each year, report to the proper Assessor of the county in which any part of the business of such company is carried on, under the oath of the agent or superintendent of such company doing business in said county, the gross amount of all moneys received by such agent or superintendent on account of such company, and for the year then next preceding the first day of April of the current year, and failing or refusing to do so, such company shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first of June, to be sued for and recovered as in case of express, telegraph, and telephone companies: *Provided*, Such report shall also contain a list of the tangible property of such company or corporation within the county, and the true cash value thereof. The amount of such gross receipts shall be reported by such Assessor to the County Auditor and shall be by such Auditor entered, together with the true cash value of such tangible property, upon the tax duplicate of the proper county, and the taxes so assessed shall be a lien upon the property of such companies until the same are paid.

Report of street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other companies.

SEC. 73. Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this State (other than railroad companies and those heretofore specifically designated) shall, by its President or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the Assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of State. In case of the failure or refusal to make report, such corporation shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the first day of June to be sued and recovered in any proper form of action in the name of the State of Indiana, on the relation of the Prosecuting Attorney, such penalty, when collected, to be paid into the county treasury. And such Prosecuting Attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action.

Statement scheduled.

SEC. 74. Such statement shall be scheduled by the Assessor, and such schedule with the statement so scheduled, shall be returned by the Assessor to the County Auditor. The Auditor shall annually, on the meeting of the County Board of Review lay before said Board the schedule and statements herein required to be returned to him and said Board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said Auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock or any part thereof is invested in tangible property, returned for

How valued.

taxation, such capital stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed.

Failure to make and return statement, reports, Auditor of State to make same.

SEC. 75. In case of the failure or refusal of the person or persons, joint stock associations, companies or corporations, their officers, agents or employes specified in the preceding section to make and return the statements and reports therein provided for the Auditor of State shall make out such returns, statements and valuations from the best information he can obtain, and for that purpose he shall have power to summon and examine under oath any person whom he may believe to have a knowledge thereof. And he shall add to such valuation twenty-five per centum thereon.

Taxable property, railroad, when listed.

SEC. 76. Every person, company, or corporation owning, managing, operating or constructing a railroad in this State shall cause all taxable property, not including property specifically taxed, to be listed, with reference to its amount, kind and value, on the first day of April of the year in which it is listed.

Statement of railroad property held for right of way, side track, etc.

SEC. 77. Between the first day of April, and the first day of June, of the year eighteen ninety-one and at the same time in each year thereafter when required by the County Auditor, any person, company or corporation, so owning, managing, operating, or constructing a railroad shall make and file with the County Auditor of the respective counties in which the railroad may be located, a statement or schedule, verified by the oath of such person, or the President and Secretary of such corporation, showing the property held for right of way, and the length of the main and all side and second tracks and turnouts, in such county, and in each city or town in the county through, or into which the road may run, and describing each tract of land, other than a city or town lot through which the road may run, in accordance with the United States, or other surveys, giving the width and length of the strip of land held in each tract and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statement in April next, after the location of their roads. When such statement shall have been

New companies.

once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the County Auditor; but the company shall, during the month of April, annually, report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way, as shall have occurred.

Right of way, how denominated and described.

SEC. 78. Such right of way, including the superstructures, main, side or second track and turnouts, turntable, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued, and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses a boundary line in entering the county, township, city or town, tending to the point where such track crosses the boundary line leaving such county, township, city or town to the point of termination in the same, as the case may be, containing ——— acres, more or less (inserting name of county, township, city or town, or boundary line of same, and number of acres and length in feet), and when advertised or sold for taxes, no other description shall be necessary to convey a good title to the purchaser.

Value of railroad track, how listed and taxed.

SEC. 79. The value of "railroad track" shall be listed and taxed in the several counties, townships, cities or towns in the proportion that the length of the main track in such county, township, city or town bears to the whole length of the road in this State, except the value of the side or second track, and all the turnouts and all station houses, depots, machine shops or other buildings belonging to the road, which shall be taxed in the county, township, city, or town in which the same are located.

Rolling stock, how listed and taxed.

SEC. 80. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, "rolling stock." Such rolling stock shall be listed and taxed in the several counties, townships, cities and towns in the proportion that the main track used or operated in such county, township, city or town bears to the length of the main track used or operated by such person, com-

pany or corporation, whether owned, operated or leased by him or them in whole or in part.

Personal property of railroads, how assessed.

SEC. 81. All personal property of any railroad, except that specifically taxed and including the tools and material for repairs, machinery, fixtures and stationary engines, shall be listed and assessed in the county, township, city or town, wherever the same may be, on the first day of April of each year.

Real estate other than "Railroad Track," how assessed and described.

SEC. 82. All real estate of any railroad company other than that denominated "railroad track," with all the improvements thereon, shall be listed as lands and lots, as the case may be, in the county, township, town or city where the same are located. In describing such real estate wherever a railroad company shall have made or makes and records a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat.

List by railroad company to County Auditor, what shall contain.

SEC. 83. Between the first day of April and the first day of June of each year every person, company or corporation, owning, constructing or operating a railroad in this State shall return to the County Auditor a list or schedule, verified by the oath of such person so owning, constructing or operating, if an individual, or if a company or corporation by the oath of the Superintendent or Secretary of such company or corporation, which shall contain:

First. A full and correct detailed inventory of all the rolling stock belonging to, or leased, hired, used or operated by such company, and which shall distinctly set forth the number of locomotives and tenders of all classes, passenger cars of all classes, sleeping, chair, and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, freight cars, flat cars, pay cars, hand cars, tank or oil cars, and all other kinds of cars, and the true cash value thereof on the first day of April of the current year shall be set opposite each of them. Such list or schedule shall also set forth the number of miles of main track on which such rolling stock is used in the State of Indiana. For the purpose of taxation such rolling stock leased or hired from persons or corporations, other than railroad companies, shall be deemed the property of the railroad company leasing the same and for that purpose shall be valued at such proportion of the full value thereof as the time during which the same is used on such railroad during any year bears to the whole year.

Second. Such list shall also contain a full and correct inventory of all the other personal property of such railroad company not specifically taxed, including

the tools and materials for repairs, the machinery, fixtures and stationary engines, and such property shall be classified and separated into the particular county, township, cities and towns, wherein the same may be on the first day of April, with the true cash value thereof, on the first day of April of the current year.

Third. Such list shall also contain an inventory of all the real estate (other than that denominated "railroad track") owned by the said railroad company on the first day of April of the current year. Such property shall also be listed with reference to the amount, kind and value, on the first day of April of the year in which it is listed.

Auditor's return to Assessor.

SEC. 84. The County Auditor as soon as he receives such list, shall return to the proper Assessor a copy of so much of said list as is contained in the second and third specifications thereof; and such property shall be listed and assessed by such Assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals except that it shall be treated as property belonging to railroads, under the terms "lands," "lots" and "personal property."

Statement by railroad companies to Auditor of State—contents.

SEC. 85. At the same time that the lists or schedules as hereinbefore required to be returned to the County Auditor the person, company or corporation running, operating or constructing any railroad in this State shall under the oath of such person, or the Secretary or Superintendent of such company or corporation, return to the Auditor of State sworn statements or schedules, as follows:

First. Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county and township, and the total in the State.

Second. The rolling stock, whether owned or hired, giving the length of the main track in each county, and the entire length of the road in this State.

Third. Showing the number of ties in track per mile, the weight of iron or steel per yard used in the main and side tracks, what joints or chairs are used in track, the ballasting of road, whether graveled, stone or dirt, the number and quality of buildings or other structures on "railroad tracks," the length of time iron or steel in track has been used, and the length of time the road has been built.

Fourth. A statement or schedule showing:

1st. The amount of capital stock authorized and the number of shares into which such capital stock is divided.

2nd. The amount of capital stock paid up.

3rd. The market value, or if no market value, then the actual value of the shares of stock.

4th. The total amounts of all indebtedness except for current expenses for operating the road.

5th. The total listed valuation of all its tangible property in this State. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of State.

Failure to make statement; duty of Auditor of State.

SEC. 86. If any person, company or corporation owning, operating, or constructing any railroad, shall neglect or refuse to return to the County Auditor the statements or schedules required to be returned to them, the property so to be returned to them and assessed by the Assessors as above specified shall be listed and assessed as other property. In case of failure to make returns to the Auditor of State, as hereinbefore provided, the Auditor of State, with the assistance of the County Auditors and Assessors when he shall require such assistance, shall ascertain the necessary facts and lay the same before the State Board of Tax Commissioners. In case of failure to make such statement, either to the County Auditor or Auditor of State, such corporation, company or person shall forfeit, as a penalty, not less than one thousand dollars nor more than five thousand dollars for each day's omission after the first day of June of each year, to be recovered in any proper form of action in the name of the State of Indiana on the relation of the Attorney-General, and paid into the State Treasury. Such Attorney-General shall conduct such prosecution and be entitled to ten per centum on the amount of judgment so recovered and paid in.

Penalty.

Auditor of State to lay statements before Board of Tax Commissioners.

SEC. 87. The Auditor of State shall annually on the meeting of the State Board of Tax Commissioners lay before said Board the statements and schedules herein required to be returned to him, and said Board shall assess such property in the manner hereinafter provided.

County Auditor to enter railroad assessments on tax duplicate.

SEC. 88. The County Auditor shall enter the railroad property of all kinds as listed for taxation upon the proper tax duplicate, and shall enter the valuation as assessed, corrected and equalized in the manner provided in this act and against such assessed, corrected or equalized valuation as the case may require, the County Auditor shall compute and extend all taxes for which said property is liable. And the County Treasurer shall collect the taxes charged against said railroad property, and pay over and account

therefor in the same manner as other taxes are collected and accounted for.

Statements by building, loan fund and savings associations.

SEC. 89. Building, Loan-Fund and Saving Associations shall be listed and assessed in the following manner: Before the first day of June of each year, the secretary of every building, loan and savings association shall file with the Auditor of the county in which such association was organized, a duplicate statement verified by said secretary, showing the amount paid into said association by shareholders upon shares of stock issued by it up to the first day of April preceding and then outstanding, and also the amount loaned up to said date, to shareholders, and secured by mortgage upon real estate listed for taxation. And the Auditor shall deliver said statement to the proper Assessor, who shall proceed to assess said association for taxation with the amount shown to have been paid into said association up to said first day of April upon outstanding shares of stock, less the amount shown by the statement to have been loaned to shareholders upon said mortgage security so listed for taxation, and neither said association nor the shareholders therein shall be liable to other taxation upon said shares of stock.

Election of Township Assessor.

SEC. 90. For the purpose of listing and assessing all property for taxation there shall be elected at the township election in the year one thousand eight hundred and ninety-four, and every four years thereafter, in each township of the several counties in this State, an Assessor for such township, who shall hold his office for the term of four years from the first Monday of August following and until his successor is elected and qualified. Within ten days after the beginning of his term he shall give bond, with at least two good and sufficient freehold sureties, to the acceptance of the County Auditor, in the sum of three thousand dollars, payable to the State of Indiana and conditioned for the faithful and impartial discharge of his duties according to law and shall take and subscribe an oath or affirmation, to be endorsed on his bond, that he will faithfully, honestly and impartially discharge the duties of his office to the best of his skill and ability; and the bond so endorsed shall be deposited with the County Auditor, and the said Auditor is hereby authorized to administer the oath of office aforesaid. If such bond and oath are not given and filed in the County Auditor's office within said ten days, the office shall be vacant and the County Auditor shall at once fill such vacancy by appointment, and such appointee shall give the bond and take the

Term of.

Bond of.

oath as above required. And if from any other cause a vacancy should occur in said office in any township at any time, the County Auditor shall fill such vacancy by appointment, and the person so appointed shall qualify as herein required. All Township Assessors last elected or appointed shall continue in office until the next township election, and until their successors are elected and qualified under this act, at the same rate and limit of compensation as herein provided. Persons holding the office of Township Assessor on the taking effect of this act shall not be eligible to said office at said township election in 1894; and hereafter no person shall be eligible to the office of Township Assessor more than four years in any period of eight years. The oath of office to be taken by said Assessor and endorsed upon his bond shall be in the words following:

Oath of.

State of Indiana, County of ————, *ss*

I,————, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Indiana, that I will faithfully, impartially, and honestly discharge the duties of my office as Township Assessor, particularly that I will assess all property assessed by me at its true cash value, as such value is defined in section 53 of the act concerning taxation, according to my best knowledge and judgment, so help me God.

————————————

Subscribed and sworn to before me this ——— day of ——, 189—.

————————————, County Auditor.

All Deputy Assessors shall be sworn in like manner.

Deputy Assessors.

SEC. 91. Whenever a Township Assessor shall be unable to complete the duties required of him within the time designated by law, he may appoint one or more suitable and competent persons as deputies to assist him in making the assessment and he may designate the portion of the township, town or city in which they shall act. Such deputies shall make their return to the proper Assessor.

Compensation of Assessors.

SEC. 92. For their services the Township Assessors shall receive as compensation two dollars per day for the time actually employed in the duties of their office, not exceeding sixty days in any one year, to be paid to them from the county treasury, upon the warrant of the County Auditor, and they shall receive no extra allowance for services. Their deputies shall also receive two dollars per day for each day they are actually employed: *Provided*, That nothing in this section shall be taken to

alter or repeal any of the provisions of an act fixing the salaries of County Commissioners, Township Assessors and Trustees, approved March 6th, 1889.

List of lands on duplicate to be given Assessor.

SEC. 93. The County Auditor of each county shall, on or before the first day of April in each year in which realty is assessed, make out and deliver to the Assessors, by civil townships, lists of all lands, town and city lots entered on the duplicate of the preceding and present year, noting thereon all transfers which may have been made subsequent to the making out of such duplicate, and shall also enter thereon all new entries and other lands and city, town and village lots lying within his county which may come to his knowledge and not previously entered for taxation, and in so doing when a whole section, half section, quarter section or half-quarter section appears to belong to one owner, it shall be described in one description and shall be listed as one tract and when all the lots in one block appear to belong to one owner they shall be described in one description and listed as one block; when several lots in the same block shall belong to the same owner, they shall as far as practicable be included in one description, and in making up the tax duplicates it shall be the duty of the County Auditors, as far as practicable, to preserve and perpetuate such consolidated description, and it shall be the duty of said Auditor to furnish the Assessor with all blanks necessary in the discharge of his official duties, and he shall also, where the same have not been already prepared, prepare plats of each civil township of his county divided into sections and quarter sections, and grant and other governmental subdivisions, and deliver the same to him with said blanks, and it shall be the duty of said Assessor to designate in pencil the lands of each owner on such plats. When such plats have been once prepared, they shall be carefully preserved by the County Auditor, to be used whenever practicable in future assessments.

Plats.

Owner to give list of lands.

SEC. 94. The Assessor shall call upon each and every person residing in his township for a list of all lands, city, village and town in-lots and out-lots, owned by such person or persons, lying within his township, which may be subject to taxation, which list shall particularly set forth the names of the owners, the number of acres of land in each tract, lot, section or subdivision thereof, the range, township, section, quarter section, tract, or lot, or part thereof, or the number of the entry, location or survey, as the nature of the general or particular survey may require. And if the same can not be described by the Congressional survey,

then it shall be described by metes and bounds, so as to designate and identify the same or by reference to a sufficient and correct description contained in some public record of the county, or by the number and designation as contained in some partition proceeding, identifying by book and page of record whenever practicable. When he makes such call he must notify the person, company or corporation, of their duty to make out and return such list within five days. If he deems it necessary to obtain an accurate description of any separate lot or tract in his township, he may require the owner or occupant to exhibit all the title papers he may have in his possession, and whenever the person called upon fails or refuses to furnish such list to such Assessor at his office or place of business within five days after being called upon, the Assessor shall make the list according to the best information he can obtain and for that purpose, he may examine under oath any person or persons whom he may suppose to have a knowledge thereof, and the County Auditor shall add to such valuation, when returned, twenty-five per centum on the value so returned. To enable the County Auditor to make such addition, the Assessor shall enter in his return, in a column provided for that purpose, opposite the name of every person, company or corporation, required to list real estate, who has, after notice, failed or refused to furnish the list required, these words, "Failed or refused after notice."

Realty, how valued.

SEC. 95. Real property shall be valued by the Assessor as follows: Lands and the improvements and buildings thereon, or affixed thereto shall be valued at their full, true cash value, estimated at the price they would bring at a fair, voluntary private sale, not a forced or Sheriff's sale, taking into consideration the fertility of the soil, the vicinity of the same to railroads, macadamized roads, clay roads, gravel roads and turnpike roads, State or county roads, cities, towns, villages, navigable rivers, water privileges on the same, or in the vicinity of the same, the location of the route of any canal or canals, with any other local advantages of situation. In-lots and out-lots in all towns, cities or villages, with the improvements thereon or affixed thereto, shall be valued at their full cash value, as aforesaid, taking into consideration all the local advantages upon actual view of the premises. All lands and lots shall also be listed at such valuation, without taking into consideration any improvements, and this valuation, as well as the valuation with the improvements shall be set down in a proper column to be left for that purpose.

Building on right of way, how valued.

SEC. 96. When a building or structure is located on the right of way of any canal, railroad or other company, leased or granted for a term of years to any other, the same shall be valued at such price as such building or structure and lease or grant would sell at a private, voluntary sale for cash.

Mines and quarries, how valued.

SEC. 97. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same, if the land and the mine or quarry are owned by the same person, shall be valued at such price as such property, including the mine or quarry, would sell at a private, voluntary sale for cash. Where the mine or the quarry is owned or leased by a person other than the owner of the land, such land shall be valued, exclusive of the mine or quarry, as other lands are valued, and the mine or quarry and all improvements and leasehold and appurtenances shall be valued separately from the land, according to the true cash value thereof.

Assessor to examine buildings.

SEC. 98. For the purpose of enabling the Assessor to determine the value of buildings and other improvements, he is hereby required to enter, after first making known his intention to the owner or occupant thereof, and fully examine all buildings and structures of whatever kind, which are not by the laws of the State especially exempt from taxation.

Land; rule as to quantity.

SEC. 99. The Assessor, in ascertaining or determining the quantity of land in the several tracts within his township, shall be governed by the following rules: Whenever the owner or person in whose name it is listed shall hold, by virtue of a deed from another party, or from the State of Indiana, or by patent from the United States for Congress land, such deed or patent, if the quantity be therein stated, shall be taken and received as evidence of the quantity in the tract described; but if such lands shall have been surveyed subsequent to the survey made by the United States, and it shall be proven to the satisfaction of the Assessor that any such tracts of land contain a greater or less quantity than is described in the patent or deed under which said lands are held, then the Assessor shall charge the owner with the true quantity as ascertained by such subsequent survey; if the owner or person in whose name any lands are listed within the French or Clark's grant, shall hold, under an original entry or survey, with or without patents thereon, it shall be the duty of the Assessor to require the said owners or holders to cause the same to be surveyed by the County Surveyor and to return the quantity under the certificate of said Surveyor, attested by oath or affirmation,

within ten days after said owners or holders shall have been called upon to list their lands for taxation, and if any such owner or holder shall refuse or neglect to survey and list his lands as herein provided, or if he, she or they be non-residents of the township, then it shall be the duty of the Assessor to cause such lands to be surveyed and returned to himself, the expense of which survey shall be paid from the county treasury, and be by the Auditor of the county assessed against such lands in the succeeding year, and collected in the same manner as taxes are collected thereon: *Provided*, That if any owner or holder of lands has had the same previously surveyed and shall produce to the Assessor a certificate of the survey, other than that under the original entry of said lands, such survey shall be taken by the Assessor, or if the Assessor shall be satisfied from other competent evidence adduced to him under oath or affirmation that the quantity returned is correct, and that no surplus exists in the original survey, he shall enter and return the same without further survey: *Provided*, That the Assessor may deduct from the value of such tract of land, owned by any person, the value of the amount of land occupied and used by any railroad, public highway or canal, at the time of such assessment.

Value, how affixed.

SEC. 100. In making out this list the Assessor shall place opposite to each tract of land or lot listed the value without improvements, and also in another column opposite the value of the improvements erected thereon or affixed thereto.

Assessor's return book, contents.

SEC. 101. Each Assessor shall, in a book to be furnished by the County Auditor, on or before the first Monday in June in each year, make out and deliver to such Auditor, a return of the real estate listed for taxation in his township, which return shall contain:

First. The names, arranged in alphabetical order, of the persons in whose names the real estate of the township (except such as lies within the limits of any city, town or village) has been listed, and in appropriate columns opposite each name the description of each parcel of real estate listed in such name, and the value of such separate parcel as determined by the Assessor from actual view.

Second. The names, arranged in alphabetical order, of the persons in whose name the real estate in each city, town or village, respectively, in such township, has been listed, and in appropriate columns opposite each name, the description of each parcel of real estate listed in such name, and the value of each separate

parcel, as determined by the Assessor from actual view. In cases where the name of the owner of any parcel of real estate is unknown it shall be so returned. Each parcel of real estate shall be described according to the Congressional or other survey, division or subdivision, or according to the recorded plat or subdivision thereof and also in cases of parts of town lots by the number of feet along the principal street or streets upon which it abuts; and any description may be supplemented by reference to any public record of the county.

Assessor and deputy's oath.

SEC. 102. Each Assessor or Deputy Assessor shall take and subscribe an oath, which shall be certified by the County Auditor, or other officer administering the same, and attached to the return which he is required to make to the County Auditor, in the following form:

I, ————, Assessor for the township of ————, in ———— County, in the State of Indiana, do solemnly swear that the return to which this is attached contains a correct description of each parcel of real property within said township, as far as I have been able to ascertain the same; that the value attached to each parcel in said return is, as I verily believe, the full and true cash value thereof, estimated agreeably to the rules prescribed by the law, particularly section 53 of the act concerning taxation; that in no case have I knowingly omitted to demand a statement of the description and value of all the real estate which I am required by law to list, or in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing and valuing of real estate, subject to all the penalties hereinafter prescribed in section 255 of this act.

Which return shall be kept at the office of the County Auditor for the inspection of any owner of property contained in such return.

Memorandum of assessment to owner.

SEC. 103. Before or at the time of making such return, the Assessor shall leave with the owner or owners, or his, her, or their agent, if residing in the county, at his, her or their place of residence, a memorandum containing a description and value of each tract, lot or parcel of land, containing the amount of which his, her or their real estate has been assessed, respectively, and of the time when the Board of Review for the county will meet for the purpose of hearing and determining grievances and to equalize taxes within the same.

Quadrennial assessment.

SEC. 104. The first assessment of the real estate made in pursuance of the provisions of this act, shall

be made in the year 1891, and a like assessment shall be made every four years thereafter, and the personal property shall be assessed at the same time such real property is assessed, and by the same person or persons, and each Assessor may, when taking lists of personal property, correct all errors of assessment of real estate which he may discover on the books, either in the name of the person to whom the property is assessed by change of ownership, or otherwise, or in the description of property. The Assessor shall annually thereafter also assess any real estate, or improvement, found omitted and also note and list all changes found in improvements on real estate, and make return thereof to the County Auditor as in the year in which real estate is to be assessed.

Tabular list to County Auditor, contents.

SEC. 105. Each Assessor shall, on or before the first Monday of June, annually, make out and deliver to the Auditor of his county, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies or corporations in whose names any personal property, moneys, credits or other taxables shall have been listed, on which list or lists he shall enter separately, in appropriate columns opposite each name, the aggregate value of the several species of personal property and taxables required to be listed as attested by the person required to list the same or as determined by the Assessor making separate lists of persons residing out of any incorporated city or town, and of any persons who are residents of an incorporated city or town.

The columns shall be accurately added up.

Oath.

To such return shall be attached the following oath or affirmation, to be made by himself or his deputy, and certified by the County Auditor or other officer administering the same:

I, ————, Assessor for ——— Township, ——— County, in the State of Indiana, do solemnly swear (or affirm) that the value of all personal property, moneys, credits and other assessables, of which a statement has been made and attested by oath or affirmation of the person required by law to list the same, is truly returned as set forth in such statement; that in every case where by law I have been required to ascertain the amount and value of personal property and assessables of any person, company or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of such personal property and assessables, and that, as I verily believe, the full value thereof so ascertained by me and esti-

mated by the rule prescribed by law, particularly by section 53 of the act concerning taxation, is set forth in the annexed return; that in no case have I knowingly omitted to demand a statement of the description and value of personal property or of the amount of moneys and credits, or of the amount and value of other stocks or bonds or other assessables, which any person is required by law to list; nor have I in any way connived at any violation or evasion of any of the requirements of law in relation to listing or valuing the personal property, moneys, credits, stocks or other assessables for taxation.

Omissions and errors, correction of.

SEC. 106. When the returns of the Assessors are received, the County Auditor, if satisfied that such Assessor has omitted any personal property, moneys, rights, credits, effects, stocks or real estate in his township which it was his duty to return, may, if he deems it expedient, authorize and require such Assessor to proceed to correct any error or omission which may have occurred as aforesaid, and in such case such Assessor, shall within ten days after being so required and authorized proceed to correct such errors and omissions and make returns thereof to such County Auditor; but nothing herein contained shall authorize any Assessor to reduce the amount assessed against any person in his former return, or the Auditor may himself ascertain the value and add the same to the assessment, and such County Auditor shall charge such person with the additional amount, if any, returned by such Assessor.

City and town plats.

SEC. 107. Before any addition is made to any city or town, the person making the same, before such plat is recorded, shall present the same to the County Auditor, who shall assess and apportion the true valuation of each lot or parcel of land described in such plat, in the same manner as other lots are valued, and thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein; but in making such valuation, regard shall be had to the next preceding valuation of the real estate, so that the said lots shall, as near as practicable, be equalized with adjacent lands and lots according to such valuation.

Omitted property, Assessor's duty. Notice.

SEC. 108. Whenever the Township Assessor, prior to the filing of his return with the County Auditor, shall discover or receive credible information, or have reason to believe that any real or personal property has been omitted in the assessment of any year or number of years from the listing and assessing, or from the tax duplicate, or that any person, company, or corporation has from any cause omitted to list any part of his, her, or their property, or has not returned the full value

thereof, or that the tax for which such property was liable from any cause has not been paid, or that any real estate, by reason of defective description thereof, has failed to pay taxes for any year, or number of years, he shall proceed to correct his list and add such property to the assessment, so that such property and the owner thereof may be charged with the proper amount of taxes thereon; but, before making such correction or addition, if the person claiming to own such property or occupying it, or in possession thereof, resides in the county he shall give the person claiming to own, or occupying, or having in possession such property, notice in writing of his intention to list such property, describing it in general terms, and requiring such person to appear before him at his office, or place of business, at a specified time within ten days after giving such notice, to show cause, if any, why such property should not be listed and placed on the assessment book; and if the party so notified does not appear, or if he appear and fail to show to any good and sufficient cause why such assessment should not be made, such listing shall be made and the particular years for which such property should be listed shall be noted. Such Assessor shall also file with the County Auditor a statement in writing of his reasons for making such correction or assessment, and the facts or evidence upon which such reasons were based; the arrearages of tax which might have been assessed shall be charged against such person and property by the County Auditor. The County Assessor hereinafter provided for shall at any time during any year have the power and exercise the duties in this section prescribed for Township Assessors.

Irregularities not vitiate assessment.

SEC. 109. A failure to complete or return an assessment of property, real or personal, by the Township Assessor within the time required by this act, or any informality or irregularity in making the assessment, or in the tax lists, or errors of any kind therein, shall not vitiate the same, but the same shall be as legal and valid as if completed and returned in the time required by law, and such informalities or irregularities may be corrected at any time after such return is made, and if any property is listed or assessed on or after the first day of June, and before the return of the Assessor's books, the same shall be as legal and binding as if listed and assessed before that time, but nothing in this section shall be so construed as to release such Assessor from any penalty imposed upon him by law for his neglect or failure to make his return within the period prescribed by this act.

Alphabetical return of lists, plats.

SEC. 110. Each Assessor shall, at the time he makes return of taxable property to the County Auditor, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, corresponding with his list or lists, and also all the plats used in assessing real estate; and the Auditor shall carefully preserve the same in his office.

Assessor failing to swear party, penalty.

SEC. 111. If any Assessor or Deputy Assessor shall fail or neglect to administer to any person by him assessed any oath required by this act to be administered, he shall forfeit and pay to the State of Indiana, for the use of the school fund, the sum of twenty dollars for each case of such omission and neglect, which may be recovered by an action in the name of the State of Indiana on the relation of the Prosecuting Attorney, before any Justice of the Peace of the county, together with the costs of such action.

County Assessor, election of.

SEC. 112. There shall be elected, on the first Tuesday after the first Monday of November, 1892, and every four years thereafter, in each county in this State, one County Assessor, who shall possess the powers and perform the duties hereinafter specified: *Provided*, That no County Assessor shall be eligible for re-election until four years after the expiration of the term for which he shall have been elected: *And, provided further*, That on the first Monday of June, 1891, or as soon thereafter as practicable, the Board of County Commissioners of each county in this State shall elect, by ballot, a County Assessor to serve until the election and qualification of the County Assessor, as provided by this act. Such County Assessor shall be a resident freeholder and householder of the county not less than five years before the date of such election. Within ten days after his election, he shall give bond with at least two good and sufficient freehold sureties, to the acceptance of the County Auditor, in the sum of five thousand dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of his duties according to law, and shall take and subscribe an oath or affirmation to be endorsed on his bond that he will faithfully, impartially and honestly discharge the duties of his office to the best of his skill and ability, which oath shall be in the form, as near as may be, of the oath of office of Township Assessors, as set out in section 90 of this act. Said bond so endorsed shall be deposited with the County Auditor, who is also empowered to administer said oath. The Board of County Commissioners shall fill any vacancy in said office at

Appointment of.

any regular or special session. Said County Assessor shall receive three dollars per day for the time actually employed in the duties of his office, to be paid out of the county treasury on order of the Board of County Commissioners. Before such allowance is made said County Assessor shall file with the Board of County Commissioners an itemized statement, duly verified, showing the time actually employed by him and the nature of his services.

Pay of.

Duties of County Assessor.

SEC. 113. As soon as such County Assessor has qualified, he shall receive from the County Auditor all returns of real and personal property made by the Assessors of the several townships of the county, together with all assessment lists, schedules, statements, maps, and other books and papers filed with the Auditor by said Township Assessors. It shall be the duty of such County Assessor to make a careful examination of the tax duplicate of the county, and also of all other records and papers in the offices of the County Auditor, Treasurer, Recorder, Clerk, Sheriff and Surveyor, and to list and assess, at its true cash value, upon the proper Township Assessor's books and to the proper persons, all omitted assessable property, of every kind and nature whatsoever, including tax certificates, mortgages, debts, judgments, claims and allowances of courts and legacies and property in the hands of administrators, executors, guardians, assignees, receivers, trustees, and other fiduciaries. The valuation made on any omitted property by the County Assessor shall be entered in a separate column under the head of "Valuation by County Assessor" immediately after the column containing the valuation by the Township Assessor in the several lists and returns of said Township Assessors. The County Assessor shall have all the rights and powers given by law to Township Assessors for the examination of persons and property, and the discovery and assessment of property, and making lists and returns of the same. He shall, on or before the first Monday after the 4th day of July in each year, make returns to the County Auditor of all Township Assessors' books, returns, lists, schedules, maps, and other papers received by him from the Auditor, together with such additional lists, assessments, books and papers as he has made thereto; and all assessments so made by the County Assessor shall have the same force and effect as if made in the first instance by the Township Assessor. It shall also be the duty of the County Assessor, at any time during the year, to list and assess upon the proper Assessor's books in the office of the County Auditor any omitted prop-

erty that he may discover and which should be assessed; and the same shall be placed upon the duplicate by the Auditor, and the taxes thereon extended and collected as in other cases. The County Assessor is hereby authorized and required to advise and instruct all Township Assessors of his county as to their duties under the law, and for this purpose he shall visit each Township Assessor during the months of April or May in each year. The County Assessor is also given all the powers hereinafter given to County Auditors and Treasurers as to assessment of omitted property after the meeting and adjournment of the Board of County Review in each year, and all provisions of sections 142 and 182 of this act, as to notice or otherwise, so far as applicable, shall apply to such assessment by the County Assessor as if the same were made by the County Auditor or the County Treasurer. On order of the County Commissioners, duly entered of record at any regular or special meeting of the Board, the County Assessor may appoint one or more deputies to serve such time, not exceeding thirty days in any one year, as the Commissioners shall direct, who shall have the same qualifications, possess the same powers and perform the same duties as the Assessor, subject to his control and direction. They shall receive such compensation as the County Commissioners shall fix, not to exceed two dollars per day.

Deputy County Assessors.

SEC. 114. There shall be an annual board for the review of all assessments and the equalization of the valuation of real and personal property in each county. Such board shall be composed of the County Assessor, County Auditor and County Treasurer. The County Assessor shall be President and the County Auditor Secretary of said board, which shall be known as the "County Board of Review." The Board shall meet for assessment, review and equalization of taxes at the room of the County Commissioners in the Court House of each county, on the first Monday after the fourth day of July annually. Two weeks' previous notice of the time, place and purpose of such meeting shall be given by the County Auditor in some newspaper of general circulation, printed and published in the county; or if no newspaper be published in the county then by posting up notices in three public places in each township in the county. Such Board shall have the power to hear complaints of any owner of personal property, except "railroad track" and "rolling stock" of railroads, to equalize the valuation of property and taxables made subsequent to the preceding

County Board of Review.

Powers and duties.

first day of April, and to correct any list of valuation as they deem proper. It shall also have power to equalize the valuation made by the Assessors, either by adding to or deducting therefrom such sums as are necessary to fix the assessment at the true cash value. In all cases where the County Board deems it necessary to add omitted property, or to increase the valuation thereof by the Assessor, it shall cause the names of the persons to whose lists property is to be added, or the valuation of whose property is to be increased, to be inserted in the notice hereinbefore provided for; or such Board may, at its option, cause to be served upon the person to whose list property is to be added, or the valuation of whose property is to be increased, a written notice that it is proposed to revise or correct his list, but such notice need not specify the particulars in which it is proposed to revise or correct the list or returns, nor shall it be necessary to specify particularly in the published notice, but it shall be sufficient in any or all such notices to state generally that it is proposed to correct or revise the returns, list, statement or schedule of the person or persons named. In case such County Assessor neglects to give the written notice herein provided for, it shall be issued by the Auditor to the Sheriff of the county, who shall serve the same at least three days before the same comes up for hearing. In case the Board adjudges that the returns, statement or schedule list shall be revised or corrected by adding property thereto, or by increasing the valuation of any property therein described, the taxpayer whose list, return, statement or schedule it adjudges, shall be revised or corrected as aforesaid, shall be liable for all costs occasioned by such revision or correction. The Board shall correct all errors in the names of persons in the descriptions of property upon said list, and in the assessment and valuation of property thereon, and shall cause to be done whatever else may be necessary to make said lists and returns of assessments comply with the provisions of this act. It shall pass upon each valuation, and may, on sufficient cause being shown, or on its own motion, correct the assessment or valuation of any property in such manner as will, in its judgment, make the valuation thereof just and equal, and enter the valuation, when so changed by it, in a separate column. In all cases where a change has been made by it, or omitted property placed by it on the returns, two weeks' previous notice of the time, place, and purpose of the meeting of the Board of Review shall be given by the County Assessor. A majority of said Board

shall constitute a quorum for the transaction of business, and may decide any question. Before entering upon their duties the members of the Board of Review shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of said Board, which oath shall be administered by the Auditor to the Assessor and Treasurer, and by the Assessor to the Auditor, and shall be filed with the Auditor, and shall be in the form following:

Oath of Board of Review.

STATE OF INDIANA, }
} ss.
———— County. }

I, ————, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana and that I will faithfully and impartially discharge my duty as a member of the Board of Review for said county; that I will, according to my best knowledge and judgment, assess, review, and equalize the assessment of all the property of said county, and that I will in no case assess any property at more or less than its true cash value, as such value is defined by section 53 of the act concerning taxation, so help me God.

————————————.

Subscribed and sworn to this —— day of ———, 18—.

————————————.

At such meeting the County Auditor shall submit to the Board of Review the assessment lists of the county as returned by the Township Assessors and added to and returned by the County Assessor for the current year; and the Board shall proceed to examine and review the same. In addition to his other duties it will be the duty of the County Assessor to report to the Board of Review for the action of the Board, all corrections and changes in the returns and assessments of the Township Assessors, which in the judgment of the County Assessor ought to be made. The Board of Review will consider and act upon all recommendations made by the County Assessor and will also, of its own motion, or on sufficient cause being shown by any person, add to the assessment lists the names of persons, the value of personal property, and the description and value of real estate liable to assessment and omitted on said lists. The Board shall correct all errors in the names of persons, in the descriptions of property upon said lists, and in the assessment and valuation of property thereon and shall cause to be done whatever else may be necessary to make said lists and returns of

assessments comply with the provisions of this act. The Board shall pass upon each valuation, and enter the valuation as fixed by it in a separate column. The lists as prepared by the Assessors shall stand as approved and adopted as the act of the Board of Review, except as changed by a vote as herein provided. The Board may, on sufficient cause being shown, or on their own motion, correct the assessment or valuation of any property in such manner as will in their judgment make the valuation thereof just and equal. To that end the Board may examine, on oath, any person touching the matter. Any member of said Board may administer such oath. Said Board is hereby given full power to send for persons and papers and to compel witnesses to answer under oath, touching any question concerning the assessment and valuation of property. The Sheriff of the county shall serve all process and obey all orders of said Board, and the Board is given power to punish for contempt by fine not to exceed one hundred dollars and imprisonment in the county jail not exceeding ten days, all persons refusing to appear [and testify before the Board.] [An appeal] shall lie to the Circuit Court of the county from all orders of the Board inflicting such punishment, which appeals shall be governed by the laws providing for appeals in criminal cases from Justices of the Peace so far as applicable. Nothing, however, in this section shall be taken or construed to authorize the Board to assess any property at more or less than its true cash value as the same is defined in section 53 of this act. Where it appears from the returns of the Assessors, or from the corrections made in said return by the Board that any property owner has *bona fide* indebtedness, the same shall be deducted from the amount of his credits listed in the county, and he shall be assessed only on the residue of his credits, which residue shall be fixed by the Board of Review.

Duties as to equalizing valuation.

SEC. 115. It shall be the duty of such Board at such meeting, to inquire as to the valuation of the various classes of property in the respective townships and divisions of the county and to make such changes, whether by way of increase or decrease, in such valuation as may be necessary to equalize the same as between the townships or divisions of townships, and to determine the rate per cent. to be added or deducted in order to make a just and equitable equalization in the respective townships and divisions, so as to conform throughout the county to a just and equitable standard, reference being had to the natural and artificial characteristics

and surroundings and other elements of value. Such Board shall also have power in proper cases to reduce or increase the valuation of any particular tract or lot. Such Board may consider lands, town lots and city lots as separate classes, if necessary, for the purpose of equalization, and determine a per cent. of addition or reduction for such or any of said classes within the respective townships, as between the several townships or other divisions. The Board shall have no power to reduce the aggregate valuation of all the townships below the true cash value, nor increase the same beyond the amount actually necessary for a proper and just equalization. If the Board shall find the aggregate assessment is too high or too low or is generally unequal as to render it impracticable to equalize the same, it may set aside the assessment of the whole county, or of any township or townships therein and order a new assessment, with instructions to the Assessors to increase or diminish the aggregate assessment of their respective townships in such amount as the Board may deem right and just and consistent with law. The duration of the session of the Board of Review shall not exceed eighteen days.

County Auditor to keep record of Board.

SEC. 116. The County Auditor shall keep a full and accurate minutes of the proceedings of the Board of Review.

State Board of Tax Commissioners.

SEC. 117. Immediately upon the taking effect of this act, the Governor shall appoint two skilled and competent persons, not more than one of whom shall be of the same political party, who, together with the Secretary of State, Auditor of State and Governor, the last three of whom shall *ex officio* be members, and the Governor chairman thereof, shall constitute and be a board to be denominated the State Board of Tax Commissioners, who shall perform the duties and have the powers hereinafter specified.

Bond and oath.

SEC. 118. The Governor shall commission the Commissioners so appointed as aforesaid, and before entering upon the discharge of their official duties they shall each execute a bond payable to the State of Indiana, in the penal sum of $10,000 (ten thousand dollars), with sureties to the approval of the Governor, for the faithful discharge of their official duties, and they shall each take and subscribe an oath of office, as hereinafter set out, which oath shall be endorsed upon their official bond, which bond and oath, when so executed, shall be filed in the office of the Secretary of State.

Terms of.

SEC. 119. The members of the first Board shall hold their offices, one for two years and one for four years,

the said members to determine by lot, after they are chosen, in any manner they may agree upon, which one shall hold his office for two years and which one for four years, respectively. And thereafter persons so chosen as members of such Board shall hold their office for a term of four years.

Duties of.

SEC. 120. It shall be the duty of the State Board of Tax Commissioners:

First. To prescribe all forms of books and blanks used in the assessment and collection of taxes, and to change such forms when prescribed by law, in case any such change shall be necessary.

Second. To construe the tax and revenue laws of the State and instruct them in relation to their duties with reference to taxation and assessments, whenever requested so to do by any officer acting under any such laws, or by any other person interested therein.

Third. To see that all assessments of property in this State are made according to law.

Fourth. Especially to see that all the railroads and other corporations of the State are assessed and taxed as provided by law.

Fifth. To see that all taxes due the State are collected.

Sixth. To enforce penalties prescribed by any revenue law of the State for disobedience of its provisions.

Seventh. To determine, whenever necessary, the amount required to be levied upon property in the several counties to cover any deficiency in the State revenue, not otherwise provided for.

Eighth. To examine all books, papers and accounts, and to interrogate under oath, or otherwise, all persons necessary to enable the Board to acquire and obtain all information that could in any manner aid it in securing a compliance with the tax and revenue laws of the State by all persons or corporations liable to taxation, or to pay any license fee under any law in force in this State.

Ninth. To make such rules and regulations as the Board shall deem proper to effectually carry out the purposes for which the Board is constituted, and to make all necessary rules and regulations not inconsistent with law, as the Board may deem necessary with respect to its own meetings and procedure.

Tenth. To report to the General Assembly, at each session, the whole amount of revenue collected in the State for all purposes, classifying as to State, county, township, and municipal purposes, with the sources thereof, the amount lost and the causes of the loss, the

proceedings of the Board, and such other matters of information concerning the public revenues, as they may deem of public interest.

Eleventh. To make diligent investigation and inquiry concerning the revenue laws and systems of other States and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the General Assembly at each session thereof, such amendments, changes or modifications of our revenue laws as seem proper or necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public revenues.

Twelfth. To see that each county in the State be visited by at least one member of the Board, as often as once each year, to the end that complaints concerning the law may be heard, and that information concerning its workings may be collected. That all revenue officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made.

Record. SEC. 121. A record of the proceedings of such Board shall be kept at the capital, open to the inspection of the public. A majority of such Board shall constitute a quorum to do business. Quorum.

Compensation SEC. 122. The members of said Board, except the Secretary, Auditor and Governor, shall each receive as compensation for his services the sum of twenty hundred dollars a year, payable quarterly out of appropriations to be made for that purpose. They shall also receive traveling expenses actually paid, necessary to the performance of the duties of the office, which expenses shall be itemized by the person incurring the same, and when the account of the same is approved by the Governor, it shall be paid, not exceeding six hundred dollars per annum each, and not otherwise.

Examination of witnesses. Oath. SEC. 123. The said Board, or any member thereof, shall have power to subpœna and examine witnesses, to administer oaths, and shall have access to and the power to order the production of any books or papers in the hands of any person, company or corporation whenever necessary in the prosecution of any inquiries necessary or proper in their official capacity.

Penalties. SEC. 124. Any person who shall disobey any subpœna, or subpœna *duces tecum* of said Board or any member thereof, or refuse to testify, when requested so to do by said Board or any member thereof, shall be

deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than $50, nor more than $1,000 for each offense.

Appeals from Board of Review.

SEC. 125. Appeals shall lie from the decision of any County Board of Review to the State Board of Tax Commissioners, which shall hear and determine the same, in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper County Auditor: *Provided*, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the State Board of Tax Commissioners; but the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the Board and upon such conditions as it may prescribe.

Further duties.

SEC. 126. The duties imposed by this act, as specifically set out in section 120, so far as the same can be consistently done, shall be done and performed by the two members of the Board specially chosen to act as such, and the Governor, Auditor and Secretary of State shall only be required to sit with the Board and take part in its proceedings when performing the duties heretofore devolving upon the State Board of Equalization, and at such other times and under such other circumstances as may be rendered necessary in order to effectually carry out the purposes of this act.

Vacancy in office of Tax Commission'r; how filled.

SEC. 127. In case a vacancy shall occur by reason of the death, resignation, or removal of either of the Commissioners specially chosen to act as such, the Governor shall appoint a successor to fill out the unexpired term of the officer whose office is thus made vacant. And in such appointment the Governor shall appoint a person from the same political party as the officer whose office is thus made vacant.

Custodian's duty.

SEC. 128. It shall be the duty of the Custodian of Public Buildings and Property to furnish a suitable room in the Capitol building, and the Auditor of State shall provide all such printing and stationery, as may be necessary for the transaction of the business of said Board.

State Board of Tax Commissioners.

SEC. 129. The State Board of Tax Commissioners shall, annually, convene in the office of the Auditor of State, on the first Monday of August each year, for the purpose of assessing railroad property and equalizing the assessment of real estate as provided in this act. Said Board shall organize with the Governor as chairman, and the Deputy Auditor of State, or one of the clerks in the office of the Auditor of State, shall act as secretary. The State Board of Tax Commissioners is

hereby given all the powers given to County Boards of Review. They shall not be bound by any reports or estimates of value of railroad property, real estate or other property, as returned to the County Auditors or to the Auditor of State, but shall appraise and assess all property at its true cash value, as defined by this act, according to their best knowledge and judgment, and so as to equalize the assessment of property throughout the State; they shall have the power to send for persons, books and papers, to examine records, hear and question witnesses, to punish for contempt any one who refuses to appear and answer questions, by fine not exceeding one thousand dollars and by imprisonment in the county jail of any county not exceeding thirty days, or by both. Appeals shall lie to the Criminal Court of Marion County from all orders of the Board inflicting such punishment, which appeals shall be governed by the laws providing for appeals in criminal cases from Justices of the Peace, so far as applicable. The Sheriffs of the several counties of the State shall serve all process and execute all orders of the Board. Any member of the Board may administer any oath. All necessary costs and expenses of said Board shall be paid out of the State Treasury on warrants of the Auditor on being duly certified.

Powers.

Contempt.

Appeals from Punishment for contempt.

SEC. 130. The several persons constituting the Board, as herein provided, before entering upon the discharge of their duties as members of said Board, shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of such Board, which oath, together with the oath of the secretary, shall be filed and preserved with the proceedings of the Board. Which oath shall be in the form following, to-wit:

Oath of members.

STATE OF INDIANA, }
MARION COUNTY, } ss:

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana; that I will faithfully and impartially discharge my duties as a member of the State Board of Tax Commissioners, that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and that I will in no case assess any

property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help me God.

_____.

Subscribed and sworn to this _____ day of _____, 189—.

_____.

Secretary's oath and duties.

SEC. 131. The secretary shall take and subscribe an oath for the faithful performance of his duties as said secretary, and shall keep a record of the proceedings of the Board, which shall be certified by the chairman and secretary and filed in the office of the Auditor of State.

Quorum.

SEC. 132. Any three members of said Board shall constitute a quorum for the transaction of business, and the Board may adjourn from time to time until the business before it is finally disposed of, but the duration of their sessions shall not exceed forty days.

Duty of Board as to real estate.

SEC. 133. It shall be the duty of said Board to examine the abstracts of all the real property assessed for taxation in the several counties of this State, as returned to the Auditor of State, and shall equalize the assessments as hereinafter provided; but said Board shall not reduce the aggregate assessed valuation in the State, neither shall it increase said aggregate valuation beyond the true cash value, as defined in this act.

County Auditor's abstract to Auditor of State. Contents.

SEC. 134. For the purpose of properly equalizing the valuations of real property, and railroad property within the State, it shall be the duty of County Auditors, on or before the 20th day of July of each year, upon the receipt of the assessment books, to make out and transmit to the Auditor of State an abstract of the assessment of property, showing the number, value and average value of each class or kind of enumerated property as shown by the assessment, the value of each item of unenumerated property, and total value of personal property; the value of all land in each civil township, without improvements [the value of all improvements] thereon, and the value of such land with improvements, and in like order all city or town in-lots and out-lots, showing the value of such lots without improvements, the value of improvements and the value of such lots with improvements, the length of the main track or tracks, the length of the side track or tracks; the number or descriptions, the value and average values of each separate item of railroad property. Such abstract shall be arranged in such manner as to show by civil townships the number of acres, value and average value of improved lands, and

in like manner the number of acres, value and average value of unimproved lands, total number of acres, total value and average value per acre of all lands, the number and value and average value of improved town or city lots; the number, value and average value of unimproved town or city lots; the total number of lots, total value and average value of all lots, and the total value of all property, real and personal. Said abstract shall be made out on the blanks, which it shall be the duty of the Auditor of State to furnish the County Auditor for that purpose. The value to be given in said abstract shall be the assessed valuation, except in the case of railroad property, denominated railroad track and rolling stock, the value of which shall be given as returned by the railroad company to the County Auditors. The County Auditor shall, at the same time, and accompanying said abstract, furnish a detailed statement of the railroad property, denominated railroad track and rolling stock, reported by each road located in or through their counties. If there are any roads so located that have not made their report, as required by this act, the County Auditors shall report the facts, giving the name of such railroad, and in case of the failure on the part of any County Auditor to furnish the proper returns of the assessment of his county to the Auditor of State prior to or during the meeting of the State Board of Tax Commissioners in each year, said Board may by order authorize the Auditor of State to equalize the assessment of such county when full returns have been received by him.

Classification of property to be considered by Board separately.

SEC. 135. Said Board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz: Railroad property, lands, and town and city lots, and upon such consideration determine such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the State, as may be deemed by the Board to be equitable and just—such rates being in all cases even, and not fractional, and such rates as finally determined by said Board shall not be combined.

Counties, how equalized.

SEC. 136. Counties shall be equalized by adding to the aggregate value of the lands, town and city lots, in every county in which said Board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in

every county in which said Board may believe the valuation to be too high, such per centum as will reduce the same to its proper value as defined in this act.

Railroad property, how assessed.

SEC. 137. Said Board shall also assess the railroad property, denominated in this act as "railroad track" and "rolling stock," at its true cash value, and said Board is hereby given the power and authority, by committee or otherwise, to examine persons or papers. The amounts so determined and assessed shall be certified by the Auditor of State to the County Auditors of the proper counties. The County Auditor shall, in like manner, distribute the value so certified to him by the Auditor of State to the several townships, cities and towns in his county, entitled to a proportionate value of such railroad track and rolling stock; and said Auditor shall compute and extend taxes against such value the same as against other property in such townships, cities and towns.

Result, how tabulated.

SEC. 138. When said Board shall have separately considered the several classes of property as hereinbefore required, the result shall be combined into one table and the same shall be examined, compared and perfected in such manner as said Board shall deem best to accomplish a just equalization of assessment throughout the State, preserving, however, the principle of separate rates for each class of property.

Rates certified to Auditor of State.

SEC. 139. When said Board shall have completed its assessments, and its equalization of assessments, for any year, it shall certify to the Auditor of State the rates finally determined by said Board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said Board, and it shall be the duty of said Auditor, under his seal of office, to report the action of the Board to the several County Auditors immediately after the adjournment of said Board.

Rates extended.

SEC. 140. All rates for taxes provided for by law shall be computed and extended by each County Auditor on the Assessor's valuation of property, as equalized by the County Board of Review and State Board of Tax Commissioners, except as otherwise provided by law.

Report of Board published.

SEC. 141. A report of all the proceedings of said State Board of Tax Commissioners shall be published annually, in pamphlet form, and three thousand copies thereof printed, of which number the Auditor of State shall retain two hundred copies and the remainder shall be distributed by him to the several counties in the proportion usual in similar cases.

County Auditor may assess omitted property.

SEC. 142. Whenever the County Auditor shall discover or receive credible information, or if he shall have reason to believe that any real or personal property has, from any cause, been omitted in whole or in part in the assessment of any year or number of years, from the assessment book, or from the tax duplicate, he shall proceed to correct the tax duplicate, and add such property thereto, with the proper valuation, and charge such property and the owner thereof with the proper amount of taxes thereon, to enable him to do which, he is invested with all the powers of Assessor under this act. But before making such correction or addition, if the person claiming to own such property, or occupying it, or in possession thereof, resides in the county and is not present, he shall give such person notice, in writing, of his intention to add such property to the tax duplicate, describing it in general terms, and requiring such person to appear before him at his office at a specified time, within five days after giving such notice, and to show cause, if any, why such property should not be added to the tax duplicate; and if the party so notified does not appear, or if he appears and fails to show any good and sufficient cause why such assessment shall not be made, the same shall be made, and the County Auditor shall, in all cases, file in his office a statement of the facts or evidence on which he made such correction; but he shall in no case reduce the amount returned by the Assessor, without the written consent of the Auditor of State, given on the statement of facts submitted by the County Auditor.

Notice

Making of tax duplicate.

SEC. 143. The Auditor of each county shall, between the first Monday in July and the last day of December, make out a duplicate list of taxes assessed in said county according to the forms which shall be furnished by the Auditor of State; and, in so doing, he shall enter in separate columns:

First. All lands in each civil township, with the names of the owners in alphabetical order, the value of the land without improvements, and opposite to this value of improvements thereon.

Secondly. In like order he shall enter all city and town in-lots and out-lots situated in such township, with the improvements thereon.

Thirdly. In its place, all corporation stock, except stocks in banks, which shall be assessed and taxed in the town or city where the bank is located, as in this act elsewhere provided.

Fourthly. All other personal property subject to taxation, and which shall be charged, together with the

poll-tax in the civil township where the owner resides, but when personal property is required to be listed in a township different from that of the owner's residence, it shall be taxed in the township where listed.

Fifthly. He shall number each original township in regular progression as the same shall stand entered on his duplicate, and the same township shall retain the same number from year to year; and

Sixthly. He shall number each name in each township in regular progression. The County Auditor, in making out such duplicate, shall be careful to enter thereon, all the lands previously entered for taxation, with the valuation thereof, as heretofore assessed, and all such lands as by mistake or neglect or for any other cause, shall have been omitted to be entered; also, all such lands as shall be found to have become subject to taxation since the last assessment, with such valuation as shall be affixed thereto by the Assessor; and he shall enter all personal property according to the list of the last assessment made in conformity to this act, giving a pertinent description of all property thus entered on his duplicate, and duly enter all transfers of land made since the last assessment, and carry into effect all alterations which shall be made in the Assessor's list by the Board of Review.

Estimating taxes.

SEC. 144. The County Auditor shall estimate in dollars and cents, rejecting fractions of a cent, and set down on such duplicate in one column the State, county, school, township, road and all other taxes chargeable on the valuation of property contained in such duplicate, including also the poll-tax, for State, county and all other purposes, and he shall set down in a separate column the amount of taxes on all property returned delinquent, specifying the years and the amount remaining unpaid, with the proper penalty on the same added, and shall carry out the aggregate amount in a column of totals.

Estimating taxes in installments.

SEC. 145. He shall set down the amount of taxes charged against each taxpayer in two separate columns; the first installment, embracing all road taxes, and one-half of all other taxes, shall be placed in the first column; and the second installment, embracing the other half, shall be placed in the second column, with a sufficient blank space at the right of each column to write in ink the word "paid," and when payment of either half of such taxes shall be made, the Treasurer shall write in a blank space opposite the the word "paid," and shall execute a receipt therefor in the usual form now used, except that it shall state

which installment the payment is entitled to apply to, and, if for the last installment, shall state upon its face, "in full."

Adding duplicate and apportioning taxes.

SEC. 146. He shall add on each page of such duplicate the several columns containing the valuation of real and personal estate, taxes, charges, and the number of acres, carrying the same forward from page to page to the close of each township, and at the end of the duplicate he shall recapitulate the several townships and apportion the amount of taxes levied on the property in each township, and set down in separate columns the amount of State, county, school, township, road and all other taxes levied, and add the aggregates of the above for the whole county.

Correcting errors in duplicate.

SEC. 147. He shall, from time to time, correct all errors which he may discover in his duplicate, either in the name of the person charged with taxes, the description of the property, or the amount of the tax charged, and shall add, from time to time, any corrections or additional assessments made on the Assessor's books by the County Assessor, and when such correction is made after the duplicate shall have been delivered to the Treasurer for collection, the Auditor shall give a certificate of such correction to the Treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the Auditor.

Duplicate to Treasurer.

SEC. 148. He shall cause a copy of such duplicate to be delivered to the Treasurer of his county, on or before the last day of December in each year, and he shall also make out and cause to be transmitted to the Auditor of State, on or before the first day of January in each year, a complete abstract of all the property listed in each township, the valuation thereof, the number of polls, the amount of each kind of tax, and the aggregate thereof in the county, and certify the same, as also the rate of each kind of tax assessed.

Abstract to Auditor of State.

Transfer book.

SEC. 149. The County Auditor shall keep a transfer book, arranged by townships, cities and towns, in which he shall enter a description for the purpose of taxation of all lands that have been conveyed by deed or partition with the date of the conveyance and names of the parties, and he shall indorse on such deed or instrument of conveyance the words, "duly entered for taxation," or that it is "not taxable," or "has already been listed for taxation," and for every such transfer he shall receive from the party recording such instrument a fee of ten cents for each parcel of ground or lot so transferred. He shall take care that all descriptions for the purpose

of taxation are correct, and that the owners' names are properly transcribed. Where the property is already in the name of the right owner, and needs no transfer, he shall not receive the fee of ten cents.

Treasurer's notice to taxpayers.

SEC. 150. As soon as the County Treasurer receives such duplicate, he shall forthwith cause notices to be posted up at the Court House door, and also cause the same to be published in one weekly newspaper having general circulation in his county, if any there be, for three weeks successively, stating in such notice, the amount of tax charged for State, county, school, road or other purposes, on each one hundred dollars valuation of the taxable property, also the tax on each poll for State, county, or other purposes.

Treasurer to attend at office, when.

SEC. 151. Such Treasurer shall attend at his office at the seat of justice, in person or by deputy, for the purpose of collecting the taxes charged on said duplicate, until the third Monday of April next thereafter.

When taxes paid. Installments. Delinquents.

SEC. 152. Any person or taxpayer charged with taxes on the tax duplicate in the hands of a County Treasurer may pay the full amount of such taxes on or before the third Monday in April, or may, at his option, pay the first installment on or before such third Monday, and the remaining installments on or before the first Monday of November following: *Provided, however*, That all road taxes charged shall be included in the first installment: *And, provided further*, That in all cases where the first installment shall not be paid on or before the third Monday in April, the whole amount unpaid shall become due and be returned delinquent, and collected as provided by law, and there shall be a penalty added of ten per cent. upon the amount of any installment not paid when due, which the persons or property assessed shall pay, together with cost of collection, and, if such taxes remain delinquent at the succeeding first Monday in November, there shall be a penalty of six per centum added to all such taxes that become delinquent at the preceding April and November settlements, and a penalty of ten per centum only shall be added to the current delinquency occurring on the first Monday in November

List of delinquent taxes. Levy and sale.

SEC. 153. After the third Monday of April the Treasurer shall cause a list to be made of the delinquents, with the amount due from each, and with a separate column headed "return." which list shall be certified to be correct by the County Auditor, and shall then proceed with such list, which, when so certified, shall be sufficient authority, and have the same force and effect as an execution, to call, either in person or by deputy,

upon every person named in the duplicate who is delinquent, and who resides in the county, and he shall make a demand for the amount of such delinquent taxes, and the penalty thereon, of each resident delinquent, and if the taxes and penalty are not paid on such demand he shall proceed immediately to levy upon sufficient personal property of such delinquent to pay such taxes, penalty and the costs of sale, and to sell the same in the manner and at the place hereinafter provided. In case such delinquent tax and penalty is paid upon demand, such Treasurer shall charge and receive from such delinquent, in addition to the taxes and penalty, the sum of twenty-five cents, and where a levy is made he shall charge and receive, in addition to his other costs, the sum of fifty cents for such demand. When he can find no personal property of such delinquent within the county upon which to levy, after diligent search therefor, he shall make, opposite the name of said person on said list in the column marked "return," a special return, setting forth the fact that he had made diligent search in the county for personal property of such delinquent, and was unable to find any upon which to levy for the payment of the taxes due thereon, which return shall be *prima facie* evidence of the facts therein recited; and the Treasurer shall, if he have reason to believe that such delinquent have money, effects, or other property in his possession or on deposit that can be reached by any remedy known to the law, make known such facts to the Prosecuting Attorney who shall cause such proceedings to be brought as will secure the payment of such delinquency and for his services in so doing shall receive ten per cent. of such money so collected and a docket fee of ten dollars to be taxed as costs in such action and paid out of moneys so collected.

Auditor not to credit Treasurer for uncollected delinquencies.

SEC. 154. County Auditors shall not be authorized to credit the Treasurer with any uncollected delinquency for which he claims credit, unless such Treasurer shall show, by proper returns as above provided, verified by his oath or affirmation, that he has diligently sought for and has been unable to find any personal property from which to collect such taxes, or that having made a levy, he was enjoined or otherwise prevented from making sale or collection by a court of competent jurisdiction; and in all cases where he has failed to make demand upon residents who are delinquent or to levy and sell when personal property can be found in

the county out of which to make the tax, he shall be liable, on his official bond, for such uncollected delinquency and ten per cent. damages thereon.

Levy on personal bond.

SEC. 155. When he levies upon personal property, the delinquent may retain the possession of such personal property for sixty days, and until the day of sale, by giving such Treasurer a joint and several delivery bond, payable to the State of Indiana, with good freehold surety, to be approved by such Treasurer in a penalty at least double the amount of the taxes and cost, conditioned that such personal property will be delivered at the door of the court house of the county, or such other place as the Treasurer may designate, and at the time named therein to be sold by such Treasurer at public auction, or that such obligors will then and there pay such Treasurer the amount of said delinquent taxes, penalty and cost. If such bond be not given he shall cause the property to be removed from the place the same is levied on, and to be stored in some secure place in his own name as Treasurer.

Form of bond.

SEC. 156. Such bond may be substantially in the following form, the names, description, amount and place of sale being changed to suit each particular case:

We, Richard Roe as principal, and Jonathan Jennings, as surety, are jointly and severally bound unto the State of Indiana in the penal sum of fifty dollars, on the following condition:

WHEREAS, Peter Clark, as Treasurer of Clark County, has this day levied upon one bay horse of the value of fifty dollars, to satisfy the taxes, penalty and cost for the year 1890, due from said Richard Roe. Now, if the said Richard Roe shall deliver said horse to said Clark at 10 o'clock A. M. of the 20th day of June, 1891, at the door of the court house in Jeffersonville, to be sold to pay said taxes, penalty and cost, or will then and there pay to said Clark the full amount of said taxes, penalty and cost, then this bond shall be void, else in full force.

Witness our hands and seals, May 4, 1891.

[SEAL.] RICHARD ROE.
[SEAL.] JONATHAN JENNINGS.

Approved by me May 4, 1891.

PETER CLARK,
Treasurer of Clark County.

Notice of sale.

SEC. 157. The Treasurer shall give public notice of the time and place of sale, and of the property to be sold, at least ten days previous to the day of sale, by advertisement to be posted up in at least three public places in the township where such sale shall be made.

Manner of sale

SEC. 158. Such sale shall be by public auction at the court house door, or place designated by the Treasurer, and no more property shall be sold than sufficient to pay the tax, cost and charges. The Treasurer, if he receives no bid to the amount of the tax, penalty and cost due, may, in his discretion, if he thinks the property is ample surety for the tax, purchase the same in behalf of the State of Indiana, and if the same is not redeemed within the period prescribed by law, he shall then re-expose the same for sale to the highest bidder for cash, after giving the same notice as is provided hereinbefore, and if there is any surplus after paying this tax, penalty and cost, said surplus shall be returned to the owner of said property.

Levy and sale can be made at any time.

SEC. 159. Nothing contained in the preceding section shall prevent the Treasurer from collecting delinquent taxes at any time by levy and sale of personal property. Whenever he has reason to believe that any person charged with tax is about to remove from the county without payment of his tax, he may at any time levy such tax and charges by distraint and sale of personal property, and it is hereby made his duty to levy and collect all delinquent taxes, whether they be charged upon a current year's duplicate or otherwise, as well before as after his return and settlement for a current year's taxes.

Fees for levy and sale.

SEC. 160. For levying and making such sale of personal property to pay delinquent taxes, in addition to the fee for the demand upon the resident delinquent, the Treasurer shall be allowed the same fees and charges as are allowed by law to constables for making levy and sale of personal property on execution and expenses for taking care of property levied.

Demand and collection from corporation.

SEC. 161. The County Treasurer shall demand payment of all taxes assessed on incorporated companies, except national banks and building and loan-fund associations, from the president or other proper officer of such companies, in the same manner as in other cases, and if not payed shall proceed in the collection and payment thereof and penalties thereon in the same manner as in other cases, and shall be liable to the same penalties for the non-payment of moneys collected by him.

Unable to collect from corporation, return.

SEC. 162. If such County Treasurer shall not be able to collect any tax assessed upon any incorporated company, he shall return the same to the County Auditor and be allowed therefor as in other cases, and the County Auditor shall certify the same, with the delinquent taxes, to the Auditor of State.

Bill of discovery and sequestration.

SEC. 163. If any such company shall not have personal or real estate out of which to make such delinquent taxes, the Auditor of State may, if he deem it expedient, cause to be filed in a proper Court, a bill against such company for the discovery and sequestration of its property; which Court shall order such part of the property of such company to be sequestered as they shall deem necessary for the purpose of satisfying the taxes, penalties and interest in arrears, with the cost of prosecution, and they may also, at their discretion, enjoin such company and the officers thereof from any further proceedings under their act of incorporation, and may order and direct such other proceedings as they shall deem necessary to compel the payment of such taxes, penalties, interest and costs; or such tax, penalties or interest may be recovered with cost from such delinquent company by action in the name of the State, or on the relation of the Auditor of State, in the Circuit Court of the proper county.

Return of Treasurer when delinquent removed.

SEC. 164. Whenever any person who is delinquent for the non-payment of taxes shall have removed from the county in which he was assessed, to any other county in this State, it shall be the duty of the said Treasurer, in making such return, to write opposite the name of such person the words, "removed from this county," also the name of the county to which such person shall have removed, if known to such Treasurer, if the same can be discovered upon inquiry.

Auditor's statement of delinquent tax forwarded to Auditor where delinquent resides.

SEC. 165. It shall be the duty of the County Auditor, whenever he shall be advised by the return of the Treasurer, or by any other means, that any delinquent taxpayer has removed, as aforesaid, if such Auditor shall be satisfied that there is a reasonable prospect of collecting said taxes, to make out a list of taxes owing by such person, specifying therein what is State and what are county, school and road taxes, which list shall be certified to be correct, under the hand and seal of such Auditor, and the said Auditor shall transmit the said list to the Auditor of the county to which such person shall have removed; and the said County Auditor, for making out and transmitting the said statement, shall be entitled to the sum of fifty cents.

Duty of Auditor receiving statement.

SEC. 166. The County Auditor, to whom such list shall be sent, shall immediately enter the same on his tax duplicate, and charge the Treasurer of his county with the amount and instruct him to collect the same.

Treasurer to collect tax from delinquent.

SEC. 167. The said County Treasurer of the county to which such person has removed, shall proceed to collect the said taxes, interest, damages and fees, and, in

so doing, he shall be governed by the provisions of this act and the laws regulating the duties of County Treasurers; and, when the same is collected, the County Treasurer shall pay the same into the State Treasury. The county, school and road tax and fees shall be entered to the credit of the county entitled to the same, and the Treasurer of State shall pay the same over to the proper County Treasurer.

Fees of Auditor and Treasurer.

SEC. 168. The Auditor and Treasurer of the county to which such statement shall have been sent, shall be allowed the same fees as they are now allowed or may hereafter be allowed for similar services.

Administrator, executor, etc., to pay tax.

SEC. 169. It shall be the duty of every administrator, executor, guardian, receiver, trustee, or person having the property of any decedent, infant, idiot or insane person in charge, to pay the taxes due upon the property of such decedent, ward or party, and, in case of his neglecting to pay any installment of taxes when due, when there is money enough on hand to pay the same, the County Treasurer shall present to the Circuit or other proper court of the county, at its next term thereafter, a brief statement in writing, signed by him as such County Treasurer, setting forth the fact and amount of such delinquency, and such court shall at once issue an order directed to such delinquent, commanding him to show cause within five days thereafter why such tax and penalty and costs should not be paid, and, upon his failing to show good and sufficient cause for such non-payment, the Court shall order him to pay such tax out of the assets in his hands belonging to the estate of said decedent, ward or other person; and such delinquent shall not be entitled to any credit, in any settlement of said trust, for the penalty, interest and cost occasioned by such delinquency, or by the order to show cause, but the same shall be a personal charge against him, and he shall be liable, on his official bond, for such penalty, interest and costs.

When administrator, executor, etc., advances money paying taxes.

SEC. 170. Every executor, administrator, guardian, trustee, receiver or person having the property of another in charge as aforesaid, who shall be put to any personal expense in paying the taxes of the estate of such decedent, ward or other person, by advancing the money therefor, shall be allowed the amount of the same, with legal interest, up to the time that he is reimbursed from the funds of such estate, and such advancement shall be deemed in all courts a just charge against the estate of the person or persons for whose benefit the same was advanced.

Treasurer may sell estate of decedent, ward, etc.

SEC. 171. Nothing herein contained shall prevent the County Treasurer from levying upon and selling the property of the estate of any decedent or any ward or person whose property is held in trust by another for the payment of any delinquent taxes in the same manner as other property is sold to pay delinquent taxes and the remedy given to the County Treasurers by the provisions of this act shall be regarded as only cumulative, but every person holding property, either as executor, administrator, guardian, or in any other representative or fiduciary capacity, who shall neglect or refuse to pay the taxes listed and due thereon, shall be liable in an action to the heirs of such decedent, or to such ward *cestui que trust*, for any damages sustained by such neglect or refusal.

Lien of taxes perpetual from April first.

SEC. 172. The lien of the State for all taxes for State, county, school, road or township purposes, shall attach on all real estate, on the first day of April, annually, and such lien shall be perpetual for all taxes due from the owner thereof, which have heretofore accrued or shall hereafter accrue, with the interest and penalties in each case until payment; which lien shall in nowise be affected or destroyed by any sale or transfer of any such real estate.

All property liable for full payment of tax.

SEC. 173. All the property, both real and personal, situated in any county, shall be liable for the payment of all taxes, penalties, interest and costs charged to the owner thereof in such county, and no partial payment of any such taxes, penalties, interest or costs shall discharge or release any part or portion of such property until the whole is paid; which lien shall in nowise be affected or destroyed by any sale or transfer of any such personal property, and shall attach on the first day of April, annually, for the taxes of such year.

Effect of partial payment on sale.

SEC. 174. If any such partial payment be made, and the payer desires it to be applied on any particular property, real or personal, the property so designated shall not be sold for the residue of the taxes due, if property of the same description can be found sufficient to make the balance due.

Payment on parts of real estate.

SEC. 175. The Treasurer shall receive the tax on a part of any real estate charged with taxes, provided the person paying such tax shall furnish a particular specification of such part and shall pay a like proportion of all the several taxes charged thereon for State, county, road or other purposes; and if the tax on the remainder of such real estate shall remain unpaid, the Treasurer shall enter such specification on his return to the County Auditor, to the end that the part on which

the tax remains unpaid may be clearly known; but such payment shall not discharge any lien of the State, as provided for in this act.

Receipt for tax, entry on cash book.

SEC. 176. Whenever any person shall pay the taxes charged on any property the Treasurer shall enter such payment in his cash book, give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description on the duplicate, in whole or in part of such description, as the case may be; and such entry and receipt shall bear the genuine signature of the Treasurer, or his deputy, receiving such payment; and, whenever it appears that any receipt for the payment of such taxes shall be lost or destroyed, the entry so made shall be read in evidence in lieu thereof. The Treasurer shall enter the name of the owner or of the person paying the tax, opposite each tract or lot of land, when he collects the taxes thereon, and the postoffice address of the person paying such tax.

Lien holder may pay tax and have additional lien.

SEC. 177. Any person who has a lien upon any lands returned for the non-payment of taxes may pay the taxes, interest and charges thereon, and the receipt of the County Treasurer therefor shall constitute an additional lien on such land, to the amount therein specified, and the amount so specified shall be collectible, with interest thereon, in the same manner as the original lien.

Tenant paying tax may retain from rent.

SEC. 178. Whenever the occupant or tenant of any real estate shall have paid the taxes thereon, or the same shall have been collected of him, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover by action the amount which such person ought to have paid, or retain the same from any rent due or accruing to such person from him, for the land so taxed.

Treasurer charging himself by mistake may recover amount.

SEC. 179. Whenever any County Treasurer shall, by mistake, have charged himself with, and accounted for, any tax that shall not have been paid to him, such tax shall be deemed and taken as due him personally, whether in or out of office, and may be by him collected in the same way as other taxes due and unpaid are collected. The same shall bear legal interest and be collectible in the same manner as the original lien.

Delinquent taxes, etc., may be paid before sale.

SEC. 180. Delinquent taxes, with penalty, interest and cost, may be paid to the County Treasurer at any time before property is sold therefor.

Treasurer's cash book.

SEC. 181. The County Treasurer shall keep a cash book, in which he shall enter, at the time of its reception, the amount of money received by him for taxes and from all other sources, from any person, company or corporation, the date of its reception and the name of the person paying the same, and designating particularly each item received for taxes. He shall, at the close of each month, report the total amount of such cash entries and the account on which it is paid to the County Auditor, who shall preserve such report, and such County Treasurer shall keep said cash book in his office during his official term, and on going out of office he shall deliver the same to the County Auditor, to be preserved as a public record.

When property omitted.

SEC. 182. Whenever the County Treasurer shall discover or receive credible information, or if he shall have reason to believe, at any time, that any of the property, real or personal, or the poll of any person, liable to pay tax, has not been assessed by the Assessor, or that any real or personal property has been omitted in the assessment of any year or number of years, from the assessment book, or from the tax duplicate, or that any person, company or corporation has, from any cause, omitted to list any part of his, her or their property for any year, or number of years, or has, in any year, or number of years, given a false, or incorrect, or partial statement of any of the property required by this act to be listed, or that any real property, by reason of defective description thereof, has failed to pay taxes for any year or number of years, or that the tax for which the said property was liable, has not been paid, or shall discover, before the meeting of the County Board of Review that any of the Assessors have not returned the full value of the assessables of any person required to be listed, or have made any erroneous return of such assessables, he shall report the same forthwith to the County Auditor, whose duty it shall be to correct the tax duplicate in his office, and at the same time to correct, in like manner, the duplicate in the hands of the County Treasurer, adding such property or polls thereto, and also adding the assessments and valuation thereon. The County Treasurer shall then collect the taxes thereon the same as if they had been assessed by the Assessor. All property so assessed shall be rated at its true cash value. As to notice to the person when not present, if residing in the county, the Treasurer shall be governed by the provisions of the foregoing sections in relation to Assessors and Auditors, but he shall not be required to assess the property

upon actual view, or to furnish the owner thereof with a blank list.

Delinquent list.

SEC. 183. Between the first Monday of December and the first of January, annually, the County Auditor shall make out and record, in a book to be provided for that purpose, a list of lands and lots, returned and remaining delinquent for taxes, including as well the lands of those whose personality, as assessed on the tax duplicate, is less in value than the taxes charged against the lands or lots, describing such lands or lots as the same are described in the tax duplicate, and charging them with the amount of delinquent tax, with interest and a penalty of ten per centum on such taxes, also with the taxes of the current year, and shall certify to the correctness thereof, with the date when the same was recorded, and sign the same by himself or deputy, officially.

Publication delinquent list; notice.

SEC. 184. The Auditor shall cause a copy of such list to be posted on the door of the court house, and also in some public and conspicuous place in each township, at least three weeks before the day of sale, and shall have such list printed in one weekly newspaper of the county for three consecutive weeks before such sale. It shall only be necessary in the posted list to state in the aggregate the amount of taxes, penalty, interest, and cost due thereon, including the taxes for the current year. To such list shall be attached and in like manner so posted a notice that so much of said lands and lots as may be necessary to discharge the taxes, interest and charges which may be due thereon, or due from the owner thereof, at the time of sale, will be sold at public auction at the court house door of such county, on the second Monday in February next thereafter, commencing at 10 o'clock of said day, and continuing from day to day thereafter until all are offered. The County Auditor shall, on or before the day of sale, insert at the foot of such list on his record a copy of such notice, and certify on said record immediately following such notice the manner in which the same was posted, and the place where the same was posted, and for what length of time it was printed and posted. The expense of such printing, when had, shall be paid out of the county treasury, and it shall not exceed twenty cents for each description.

Sale of lands for delinquent taxes.

SEC. 185. On the day mentioned in the notice, the County Treasurer shall commence the sale of such lands, and shall continue the same from day to day until so much of each parcel assessed or belonging to each person assessed, shall be sold as will pay the taxes,

interest and charges thereon, or chargeable to such person in said county. The person offering at said sale to pay the required sum for the least quantity of any tract shall be considered the purchaser of such quantity: *Provided*, No bid shall be received from any person not a resident of the State of Indiana, until such person shall file with said Treasurer an agreement in writing consenting to the jurisdiction of the Circuit Court of the county in which such sale shall be made, and also filing with such Treasurer an appointment of some citizen of said county as agent of said purchaser, and consenting that service of process on such agent shall give such Court jurisdiction to try and determine any suit growing out of or connected with such sale for taxes.

Sale of part of tract.

SEC. 186. When less than the whole of any tract of land shall be sold, the quantity sold shall be in a square form, as near as practicable, at the most northwesterly corner of the tract, and when less than the whole of any in-lot or out-lot of any city or town shall be sold, the part sold shall extend from the main or principal street, road or alley, forming the most convenient front to such lot, to the rear of such lot, and so as to bound the same by lines as nearly parallel with the outlines of such lot as practicable.

Sale of more than one tract.

SEC. 187. When more than one tract or lot belonging to the same person shall be for sale at the same time, in the same municipal corporation or township, a part of one of said tracts or lots shall be offered, first for the payment of the whole sum due from such owner on all such delinquent lands or lots, or otherwise; and if no person shall bid off a part of such tract or lot for the sum required, the said tract or lot shall then be offered to the highest bidder for cash, and if any amount shall yet remain due, or if no person bid for a part or all of one tract or lot, each of the other tracts or lots shall be offered in like manner until the required sum is realized; and if no one bids upon a part or all of said tracts or lots separately, enough to pay the amount due, when [then] the whole of said tracts and lots shall offered together and sold to pay the taxes, penalty, interest and costs thereon.

Payment of bid; surplus.

SEC. 188. Where such sale is made, the purchaser at such sale shall immediately pay the amount of their respective bids to the Treasurer, who shall pay the surplus, if any, to the person entitled thereto; or if he has doubt, or a dispute arises as to the proper person, the same shall be paid into the county treasury. In case the purchaser fails to pay his bid, the land shall be again

forthwith offered for sale the same as if no sale had been made, and the purchaser so failing shall forfeit and pay for the use of the common school fund of the county a penalty of twenty-five per centum on the amount of his bid, to be recovered by action of debt in the name of the Treasurer, before any Justice of the Peace, or Court having jurisdiction, and the Prosecuting Attorney shall conduct such suit, and for his services a fee of five dollars shall be taxed against such delinquent purchaser.

Auditor clerk of sale.

SEC. 189. The County Auditor shall attend, either in person or by deputy, as the clerk of the sale of such delinquent land, and shall enter the same on a sufficient record book, giving a description of the proper tract or lot, showing how much of each was sold, to whom, and the price, or whether the same remains unsold.

Certificate of sale; assignment.

SEC. 190. After payment shall have been made, the County Auditor shall give the purchaser a certificate in writing, describing the land so purchased, the sum so paid, and the time when the purchaser will be entitled to a deed for said land, and where the County Surveyor has surveyed and furnished a sufficient description, said Auditor shall take care that the land is described and identified by that description. Such certificate shall be signed by the County Auditor, who shall register the same in his office before delivery to the purchaser. Such certificate shall be assignable, but no assignment thereof shall be valid unless indorsed on such certificate and acknowledged before some officer authorized to take acknowledgments of deeds, or the proper County Auditor or Recorder in his office, for which record said Auditor shall be entitled to a fee of twenty-five cents, to be paid by the purchaser and treated as a part of the costs of the sale.

Guaranty of Treasurer.

SEC. 191. It is hereby made the duty of the County Treasurer, at the time he sells lands for taxes unpaid and delinquent, as is directed in this act, and after the purchaser of land under such sales shall have [made] payment of the amount of their bids, respectively, to indorse upon and annex to each certificate to be given to the purchaser by the County Auditor, as required by this act, his written guaranty, signed by him, warranting that the taxes due upon the tract, lot or lots, piece or parcel of land, which, or a portion of which, are named in such certificate. And if it should at any time appear that such County Treasurer had, before the time of making such guaranty, received, either in person or by deputy, the taxes assessed against such tract or tracts, lot or lots, piece or parcel of land, the holder of such certificate is

entitled to his action upon such written guaranty aforesaid, forthwith, upon the fact becoming known that such lands were improperly sold, and without waiting the accrual of any special damage to such holder; and, in such action, the measure of damages to which such holder of such certificate is entitled, shall be double the amount paid by such holder, as taxes, interest, penalty and charges, with lawful interest thereon; or such holder is entitled to his action on the official bond of such Treasurer, against him and his sureties, as for dereliction in duty, in which action the measure of damages is the same as above mentioned.

Time and cost of redemption.

SEC. 192. The owner or occupant of any land sold for taxes, or any other persons having an interest therein, may redeem the same at any time during the two years next ensuing, in the following manner: If redeemed within six months from the day of sale, he shall pay to the County Treasurer, for the use of the purchaser, his heirs or assigns, the full sum of the purchase-money named in his certificate, and all the costs of sale, together with ten per centum in addition; if redeemed after six months and within one year, he shall pay, in like manner, the purchase-money, together with costs and fifteen per centum in addition; if redeemed after one year and within two years, he shall pay, in like manner, the purchase-money, together with costs and twenty-five per centum in addition, and he shall also pay all taxes which have been paid thereon, with interest at the rate of six per centum per annum on such taxes, and, in case the party purchasing the land, or his assigns, fails to take a tax deed for the land so purchased within six months after the expiration of the two years, no interest shall be charged or collected from the redemptioner after that time.

Infants, insane, etc., may redeem.

SEC. 193. Infants, idiots and insane persons may redeem any lands belonging to them sold for taxes, within two years after the expiration of such disability, in the same manner as provided in the preceding section for redemption by other persons.

Redemption undivided part.

SEC. 194. Any person claiming an undivided part of any land sold for taxes may redeem the same on paying such proportion of the purchase-money, interest, penalty and subsequent taxes as he shall claim of the land sold.

Redemption undivided share.

SEC. 195. Any person claiming an undivided share in any land out of which an undivided part shall have been sold for taxes, may redeem his undivided share by paying such portion of the purchase-money, interest, penalty and subsequent taxes as he claims of the land sold.

Redemption specific part.

SEC. 196. Any person claiming a specific part of any lands sold for taxes may redeem his specific part by paying such proportion of the purchase-money, interest, penalty and subsequent taxes as his quantity of ground shall bear to the whole quantity sold.

Redemption specific part.

SEC. 197. Any person claiming a specific part of any lands out of which an undivided part shall have been sold for taxes charged on the whole tract or lot, may redeem his specific part by paying such proportion of purchase-money, interest, penalty and subsequent taxes as his quantity of acres shall bear to the whole quantity taxed.

Owner of specific part not liable to contribute for part sold.

SEC. 198. Any person claiming a specific part of any lands out of which a specific part belonging to some other owner shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying into the county treasury, at any time before the expiration of the time allowed for redemption, such proportion of purchase-money, penalty and interest as his quantity of acres will bear to the whole taxed; and such payment shall operate as a redemption of a proportionate part, according to the amount paid, of the land sold.

Auditor to determine proportion to be paid by redemptioner.

SEC. 199. In every case where a partial redemption is asked for, pursuant to the preceding five sections, the County Auditor, upon the application of the redemptioner, after notice to the holder of the certificate, shall determine the proportion to be paid by the party applying to redeem, and his decision shall be final thereon. For his services in stating the proportion, the redemptioner shall pay him fifty cents; and in every case of a partial redemption, pursuant to either of the said sections, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption, and the County Auditor shall convey accordingly.

Redeeming land held conjointly.

SEC. 200. Whenever the land of any one person shall be sold for taxes assessed conjointly on the lands of such person and the lands of another person, and such other person shall not pay his due proportion, the person whose lands shall be sold may redeem the same in paying the amount due to the purchaser; and he shall be entitled to recover from such other person whose lands were assessed with his, a just proportion of the redemption money so paid, with lawful interest from the time of such redemption; but no suit shall be brought for the recovery of such proportions until after the expiration of the time allowed for redemption.

Recovery.

SEC. 201. If such owner shall not redeem the lands sold, and the same shall be conveyed by the County Auditor, such owner may recover from such other person the same proportion of the value of the land sold and conveyed, that he ought to have paid of the tax, interest and charges, for which the land shall have been sold.

What judgments have priority.

SEC. 202. Every judgment obtained under either of the last two sections shall have priority as against the lands of the defendant therein, on which the tax was assessed and for which such proportionate part ought to have been paid, to all mortgages executed, and all judgments recovered since the time when such taxes were assessed.

Improvements by purchaser at tax sale.

SEC. 203. In case any lasting and valuable improvements shall have been made by the purchaser at a sale for taxes, or by any person claiming under him, and the land on which the same shall have been made shall be redeemed as aforesaid, the premises shall not be restored to the person redeeming, until he shall have paid or tendered to the adverse party the value of such improvements; and, if the parties can not agree on the value thereof the same proceedings shall be had in relation thereto, as shall be prescribed in the law existing at the time of such proceedings for the relief of occupying claimants of lands. No compensation shall be allowed for improvements made before the expiration of two years from the date of sale for taxes.

Auditor's memorandum of redemption.

SEC. 204. When lands sold for taxes, or any portions thereof, shall be redeemed, the County Auditor shall insert a memorandum of such redemption, the quantity or description of the portion redeemed, if not the whole, the date thereof and by whom made, on his record of sales of land for delinquent taxes, and sign the same officially, and shall likewise give a certificate thereof to the person redeeming.

Tax deed.

SEC. 205. If no person shall redeem the lands sold for taxes within two years from the sale, at the expiration thereof, and on production of certificate of purchase, and in case the certificate covers only a part of a tract or lot of land, then accompanied with a survey or description of such part, made by the County Surveyor, the Auditor of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the State, a conveyance of the real estate so sold, which shall vest in the grantee an absolute estate in fee simple, subject, however, to all the claims which the State may have thereon for taxes, or liens, or incumbrances. In making such

conveyance, when two or more parcels, tracts, or lots of land are sold for the non-payment of taxes to the same purchaser or purchasers, or the same person or persons shall, in any wise become the owner of the certificates thereof, all of such parcels shall be included in one deed.

Form of deed.

SEC. 206. Such conveyance shall be executed by the County Auditor, under his hand and seal, witnessed by the County Treasurer and acknowledged before the County Recorder, or any other officer authorized to take acknowledgments and the same shall be recorded in the Recorder's office before delivery; a fee for recording shall be paid by the purchaser and shall be included in the costs of sale. Such deed shall be *prima facie* evidence of the regularity of the sale of the premises described in the deed, and of the regularity of all prior proceedings, and *prima facie* evidence of a good and valid title in fee simple in the grantee of said deed; and such deed shall be in the following form, as nearly as the nature of the case will admit, namely:

Whereas A. B. did, on the ——— day of ———, 18—, produce to the undersigned, C. D., Auditor of the county of ———, in the State of Indiana, a certificate of purchase, in writing, bearing date the ——— day of ———, 18—, signed by E. F., who, at the last mentioned date, was Auditor of said county, from which it appears that the said A. B. did, on the ——— day of ———, 18—, purchase at public auction at the door of the court house in said county, the tract, parcel or lot of land lastly in this indenture described, and which lot was sold to ——— for the sum of ——— dollars and ——— cents, being the amounts due on the following tracts or lots of land, returned delinquent in the name of G. H., for the non-payment of taxes, costs and charges for the years ———, namely: [Here set out the lands offered for sale]; which said lands have been recorded, among other tracts, in the office of said Auditor, as delinquent for the non-payment of taxes, costs, and charges due for the year last aforesaid, and a true copy of said record transmitted to the office of the Auditor of State, in manner and form prescribed by law, and legal publication made of the sale of said lands; and it appearing that the said A. B. is the legal owner of said certificate of purchase and the time fixed by law for redeeming the land therein described having now expired, the said G. H., nor any person in his behalf, having paid or tendered the amount due the said A. B., on account of the aforesaid purchase and for the taxes by him since paid, and the said A. B., having

demanded a deed for the tract of land mentioned in said certificate, and which was the least quantity of the tract above described that would sell for the amount due thereon for taxes, costs and charges, as above specified, and it appearing from the records of said County Auditor's office that the aforesaid lands were legally liable for taxation, and had been duly assessed and properly charged on the duplicate with the taxes for the years ——;

Therefore, this indenture, made this —— day of ——, 18—, between the State of Indiana, by C. D., Auditor of said county, of the first part, and the said A. B., of the second part, witnesseth: that the said party of the first part, for and in consideration of the premises, has granted, bargained and sold unto the said party of the second part, his heirs and assigns, forever, the tract or parcel of land mentioned in said certificate, situate in the county of ———, and State of Indiana, and described as follows, namely: [Here set out the particular tract or parcel sold], to have and to hold the said last mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part, his heirs and assigns, forever, in as full and ample a manner as the Auditor of said county is empowered by law to sell the same.

In testimony whereof, the said C. D., Auditor of said county of ———, has hereunto set his hand, and affixed the seal of the Board of County Commissioners, the day and year last above written.

Witness: ————————, [L. S.]
Auditor of ——— County.

STATE OF INDIANA, ——— COUNTY, SS.

Before me, the undersigned, ———, in and for said county, this day, personally came the above-named C. D., Auditor of said county, and acknowledged that he signed and sealed the foregoing deed for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal this —— day of ———, 18—.

————————, [L. S.]

Change of form.

SEC. 207. In case circumstances should exist requiring any variation from the foregoing form, in the recital part thereof, the necessary change shall be made by the County Auditor executing such deed, and the same shall not be vitiated by any such change, provided the substance be retained.

Fee for tax certificate and deed.

SEC. 208. The County Auditor shall be entitled to receive for each tax certificate fifty cents, and for each tax deed one dollar, which shall include the acknowledgment, and in case two or more deeds be made to the same person, the Auditor shall be entitled to demand and receive from such person seventy-five cents for the first deed and fifty cents for each additional one.

Deeds under former law.

SEC. 209. The County Auditors are hereby authorized to make deeds for lands in their respective counties, sold for taxes under any former law, where the same remains yet to be done, and the deeds so made shall be good and valid, as if made by the person authorized under any former law to make them.

Certificates canceled.

SEC. 210. When conveyances are delivered for lands sold for taxes the certificates therefor shall be canceled and filed away by the Auditor; and in case of the loss of any certificate, on being fully satisfied thereof by due proof, or upon the production of a certified copy thereof, the Auditor may execute and deliver the proper conveyance, and file such proof in his office.

Register of sales.

SEC. 211. A register shall be kept by the County Auditor in his office containing a brief description of the lands by him conveyed on sales for taxes, the name of the person charged therewith, the date of the sale, the name of the purchaser, the amount for which it sold, the name of the grantee in the deed, and the date of its execution.

Proceedings when sale invalid.

SEC. 212. Whenever the County Auditor shall discover, prior to the conveyance of any lands sold for taxes, that the sale was, for any cause whatever, invalid, he shall not convey such lands; but the purchase-money and the interest thereon shall be refunded out of the County Treasury to the purchaser, his representatives or assigns, on the order of the County Auditor; and such land, if originally liable to taxation, being still delinquent, shall again be placed on the delinquent list, and the amount so refunded, with interest, be collected as in other cases.

When sale invalid.

SEC. 213. No sale or conveyance of land for taxes shall be valid if at the time of being listed such land shall not have been liable to taxation, or, if liable, the taxes thereon shall have been paid before sale, or if the description is so imperfect as to fail to describe the land or lot with reasonable certainty and in all such cases, the money paid by the purchaser at such void sale shall be refunded, with interest, out of the county treasury, on order of the County Auditor.

Lien of State transferred.

SEC. 214. If any conveyance for taxes shall prove to be invalid and ineffectual to convey title because the

description is insufficient, or for any other cause than the first two enumerated in the preceding section, the lien which the State has on such lands shall be transferred to and vested in the grantee, his heirs and assigns, who shall be entitled to recover from the owner of such land the amount of taxes, interest and penalty, legally due thereon at the time of such sale, with interest, together with the amount of all subsequent taxes paid, with interest, and such lands shall be bound for the payment thereof.

When sale not invalid.

SEC. 215. The sale of lands for taxes shall not be invalid on account of such lands having been listed or charged on the duplicate in any other name than that of the rightful owner.

When purchaser dies to whom deed made.

SEC. 216. In all cases of sale of lands for taxes, if the purchaser or his assigns shall die before a deed shall be executed on such sale, the deed may be executed by the Auditor to and in the name of the deceased person, if such deceased person being still alive, would be entitled to a deed, or to his heirs at law or devisees; which deed shall vest the title in the heirs or devisees of such deceased person in the same manner and liable to like claims of creditors and other persons as if the same had been executed to such deceased person immediately previous to his death (or the executor or administrator may assign the certificate of purchase, and the deed may issue to the assignee thereof), and in like cases which have heretofore occurred, the same rule shall apply, and all deeds heretofore issued in the name of any deceased person who if living at the time of the execution thereof would have been entitled thereto, shall have like effect as above provided.

List of delinquents to Prosecutor; suit.

SEC. 217. The County Auditor shall make a list each year, before the 31st day of December of all the lands, town and city lots, which have been offered for sale for three years successively, after the passage of this act, and which have remained unsold for want of bidders, and in said list he shall describe the name of the person to whom said lands or lots are taxed, if known, or, if unknown, as they appear on the duplicate, and the aggregate amount of the taxes, penalty interest and costs due thereon, and a description of the lands or lots upon which the taxes are assessed, and such description shall be sufficient, if made in the manner that lands may be assessed for taxation under this act; and the Auditor, if he finds the description on the tax duplicate or delinquent list imperfect, shall correct and perfect the same, and he may amend such description at any time, which list he shall certify under his hand and seal of office to

be a true and correct list of such unsold lands, and he shall deliver the same to the Prosecuting Attorney with an order to him to proceed to enforce the lien of the State of Indiana for such taxes, penalty, interest and cost upon such lands or lots. Such Prosecuting Attorney shall also procure from the Treasurer of any city or incorporated town within the limits of which such real estate is situate, a statement of the aggregate amount of the municipal taxes, penalty, interest and cost due thereon. Before such Prosecuting Attorney shall proceed to enforce such lien, he shall ascertain, if the same can be done, the name and residence of the owner of such lands or lots, and he shall proceed to bring suit in the Circuit Court of the county in the name of the State of Indiana, on the relation of the Prosecuting Attorney, against such owner, making parties thereto all persons who claim to have an interest, in said lands and lots, or who appear by the public records of the county to have judgment liens, mortgage liens or other liens of record, upon said lands or lots, and also the city or town in which said real estate is situate and requiring them to assert such liens or claims in said suit. The City Attorney or attorney of such town, shall appear for the city or town in such case and assert its claim and in so doing he shall be allowed a docket fee of five dollars, which shall be taxed as costs. The process shall be issued and served and publication made, and all the proceedings conducted in the same manner as ordinary civil suits to foreclose mortgages are conducted, and the judgment obtained upon the lien for such taxes, penalty, interest, cost and charges shall have priority over all other liens upon such lands or lots, and next in order of priority shall be the judgment obtained for the taxes, penalty, interest and costs due for municipal purposes to the city or town in which such real estate is situated and such liens shall in no wise be affected or destroyed by any sale or conveyance of such lands or lots or by any misnomer on the tax books or assessment books of the owner of said lands or lots.

Decree. Prosecutor's fee.

SEC. 218. The decree in such suit shall provide that the property shall be sold by the Sheriff, as other lands are sold on execution, at the court house door of the proper county, to the highest bidder, for cash, by the Sheriff of the county, and the judgment as to the lien for taxes, penalty, interest and cost, shall be without any relief from valuation or appraisement laws and without stay of execution; and the first proceeds of such sale after the payment of costs of suit shall be applied

to the extinguishment, *pro tanto*, of the judgment for taxes, penalty, interest and costs, and paid into the County Treasurer's office, and the residue shall be apportioned in such manner as the Court may direct, according to the rights of the parties; but in cases where there are no lien claimants, or conflicting claims of ownership, the Court shall direct that the surplus, if any, shall be paid into the Treasurer's office for the use of the owners of such lands and lots. A docket-fee of ten dollars for the Prosecuting Attorney shall, in each case of foreclosure for a tax lien, be entered and charged as costs on the judgments against such lands or lots, when such judgment is obtained and collected, as other costs.

Evidence.

SEC. 219. In such suits, and in all other suits, and for any purpose of evidence or authentication, the records made by the County Auditors respecting delinquent lands, the manner of advertisement of sales thereof, the sales made of the same and the conveyances thereof executed, and all copies of such records, or of any other papers required by this act to be made out, duly certified to be such by the proper County Auditor, under his seal of office, shall be received as *prima facie* evidence of the facts contained therein.

Several parcels. One suit.

SEC. 220. Where there are several parcels of lands or lots belonging to the same person, and which have been offered for sale for non-payment of taxes for three years successively, and have remained unsold for lack of bidders, all of such lands and lots shall be included in one suit.

Tax title defeated; proof.

SEC. 221. In all suits and controversies involving the title of land claimed and held by virtue of the deed executed by the County Auditor for non-payment of taxes thereon, under this or any former tax law, the person claiming by adverse title to such deed shall be required to prove, in order to defeat the title conveyed by such deed, either that the land described therein was not subject to taxation at the date of assessment of the tax for which it was sold, or that the taxes for the non-payment of which the land was sold were paid to the proper officer within the time limited by law therefor, or that the same had not been assessed for the taxes for the non-payment of which it was sold, or that the same had been redeemed pursuant to law, or that a certificate in proper form had been given by the proper officer, within the time limited by law for paying taxes or for redeeming from sales made for the non-payment thereof, stating no taxes were due at the time such sale was made, or that the lands were not subject to taxation.

Suit to quiet title; proceedings.

SEC. 222. Any person holding any deed of lands or lots executed by the County Auditor for the non-payment of taxes, may commence a suit in the Circuit Court of the county where such lands lie, to quiet his title thereto, without taking possession of such lands, and all parties who have, or claim to have, or appear of record in any of the public offices of the county where such land or lot is situated, to have any interest in, or lien upon, such lands or lots, shall be made defendants in such suit, and no outstanding unrecorded deed, mortgage or claim shall be of any effect as against the title or right of the complainant as fixed and declared by the decree made in such cause. The Court shall cause the facts to appear of record, and if upon the hearing of such cause it shall appear that the complainant's title was or is invalid for any cause, such suit shall not be dismissed by the Court, but the Court, in cases where the tax was due and unpaid, or where the complainant's title was invalid for defect or uncertainty of description shall ascertain the amount due the complainant, for principal and interest, to be computed at twenty per cent. per annum, and shall decree the payment thereof within a reasonable time by the owner of such land, and in default thereof shall direct that such land or lot be sold therefor, and that the equity and right of redemption of all defendants in such suit, and all persons claiming under them shall be forever foreclosed: *Provided*, That proceedings in such cases shall be conducted in the same manner, as near as may be, in conformity with the practice in the case of foreclosure of mortgages.

Lien transferred to grantee.

SEC. 223. If any conveyance made by the County Auditor, pursuant to a sale made for the non-payment of taxes, under this or any former tax law, shall prove to be invalid and ineffectual to convey title for any other cause than such as are enumerated in the section immediately preceding the last section, the lien which the State had on such land for State, county, township and all lawful purposes, shall remain in full force, and shall be transferred by such deed to the grantee and vested in him, his heirs and assigns, who shall be entitled to recover from the owner of such lands the amount of such legal taxes, together with all lawful charges, with interest at twenty per cent. per annum, from the date of such sale, and also the amount of all subsequent taxes paid, with like interest, and such claim shall be a lien upon such lands, and the same shall be bound for the payment thereof; and in case judgment be rendered against the person holding the title from the Auditor, as

aforesaid, for the recovery of such land, in an action of ejectment or other action, either at law or in equity, the Court shall ascertain the amount due to the party holding such tax deed for principal and interest and for all improvements made by him on such lands and shall decree the payment thereof within such reasonable time as may be determined by such Court, and in default of such payment, shall decree that such lands be sold therefor or sufficient thereof to pay the amount of such improvements, principal and interest due to the party having the Auditor's deed, his heirs and assigns: *Provided*, That there shall be no right of redemption of such property after the date of sale, and that the sale shall be without the benefit of appraisement laws, and the Sheriff shall, upon the receipt of the purchase-money, execute to the purchaser a deed in fee simple.

Tax not invalid for want of form.

SEC. 224. No general or specific tax authorized by the laws of this State, and which shall be assessed on any property in any township, city or town within this State by any officer authorized to make assessments or which if made by another person or may be adopted by such officer as his act shall be held to be illegal or invalid for want of any matter of form in any proceeding not affecting the merits of the case, and which shall not prejudice the rights of the party assessed. And all taxes assessed upon any property in this State, shall be presumed to be legally assessed until the contrary is affirmatively shown, and no sale of real estate for the non-payment of the taxes thereon shall be rendered invalid by showing that any certificate, return, affidavit or other paper required to be made and filed in any office is not found in any office where the same ought to be filed or found, but until the contrary is proven the presumption shall be in all cases that such certificate, return, affidavit or other paper was properly made and filed in the proper office.

Owner deprived of title, etc; recover damages.

SEC. 225. Whenever the owner of any tract, lot, parcel or piece of land is deprived of his title thereto, or to some portion thereof, or by reason of any suit in relation thereto is put to expense, damages, costs or charges, by reason of the failure of the County Treasurer to give proper credit for any taxes paid to him, or whenever any tract, parcel or lot of land shall have been assessed to two different persons and the entire tax shall have been paid by either of them, and the Treasurer shall sell such land as delinquent on account of the non-payment by the other party of the taxes assessed against him thereon, the party damaged by such sale, or his legal representatives, may, in an ac-

tion against the officer by whose act or omission such damages have been caused, or upon his official bond, recover a judgment for double the amount of all the damages, costs and charges to which such owner may have been subjected in consequence of such failure or such dereliction of duty.

April settlement.

SEC. 226. The County Auditor and Treasurer shall attend at the office of said Auditor on the third Monday in April, annually, and the Treasurer shall then and there make a statement with the Auditor for the amount of taxes for which such Treasurer is to stand charged, as follows:

First. The Auditor shall, in a column or columns, for the purpose, opposite the name and description on the right hand of the duplicate, in the hands of the Auditor and Treasurer, extend a list of all such taxes as the Treasurer shall have been unable to collect.

Second. The Treasurer under oath, to be administered by the Auditor, shall certify in such duplicate to the correctness of such list, setting out in words and in figures the amount thereof.

Third. The Treasurer shall immediately proceed to collect the same in the manner provided by law.

Fourth. After deducting the amount of taxes so returned delinquent, and the collection fees allowed the Treasurer from the several taxes charged on the duplicate, in a just and ratable proportion, the Treasurer shall be held liable for the balance.

Fifth. The Auditor shall certify in such manner as the Auditor of State shall direct the balance due for all State purposes, and the balance due for county or other local purposes, which certificate he shall deliver to the Treasurer, who shall deliver the same to the Auditor of State at the time he makes settlement with him. The said Treasurer shall also, on the first Monday in November, make settlement with the County Auditor for the amount of all the tax and delinquent tax for which said Treasurer is to stand charged; said settlement, in all respects, to be made and certified in such manner as the Auditor of State shall direct, and it shall be the duty of the County Auditor to forward a certified copy of such settlement forthwith to the Auditor of State.

Pay money due to State, when.

SEC. 227. Each County Treasurer shall on or before the 15th day of May in each year pay over to the State Treasurer all the moneys found due for all State purposes according to the certificate of settlement with the Auditor of his county, and shall take a receipt or receipts for the money so paid, which he shall deposit with the Auditor of State who shall give him a quietus.

Pay money due State revenue, school tax, etc., when.

SEC. 228. Each County Treasurer shall also, on or before the 1st day of January of each year pay over to the State Treasurer all the moneys found due for State revenue, school tax and all other State purposes according to the certificate of settlement with the Auditor of his county, and shall take a proper receipt or receipts from the Treasurer for moneys so paid, which he shall deposit with the Auditor of State who shall give him a quietus.

Treasurer failing to pay, penalty.

SEC. 229. If any County Treasurer shall fail to pay into the State Treasury the amount due to the State on his account for the State and other taxes before or at the time required by this act he shall forfeit and pay to the State of Indiana a penalty of fifteen per cent. on the amount due, which shall, together with the amount due the State, be recovered by an action of debt in the name of the State of Indiana against such dilatory Treasurer. And it shall be the imperative duty of the Auditor of State to notify at once the Prosecuting Attorney of the proper county of such default and such attorney shall bring suit immediately against such Treasurer, and such penalty, when recovered shall be paid into the State Treasury. For his services in collecting such penalty such Prosecuting Attorney shall be allowed a docket fee of ten dollars, to be taxed as costs against such defaulting officer. In no case shall the Prosecuting Attorney fail to bring such suit unless satisfactory evidence from the County Board is presented to him, showing by official action taken by such Board lawful cause why the Treasurer could not pay over in part or in whole the amount due on such Treasurer's account with the State.

Mistake in settlement, how corrected.

SEC. 230. If any County Treasurer in making settlement with the County Auditor shall stand charged by mistake with any tax remaining unpaid, and shall not receive a credit therefor in such settlement such Treasurer may collect such tax for his own use at any time after such settlement, either by distress and sale, as hereinbefore provided, or by an action of debt in his own name, before any Justice of the Peace or Court having jurisdiction.

Treasurer failing to settle with county, suit on bond.

SEC. 231. If any County Treasurer shall refuse or neglect to make return or settlement with the Auditor of his county, as in this act required, he and his sureties shall be held liable to pay the full amount of the taxes charged on the duplicate, respecting which he so refuses or neglects to make return or settlement, together with interest from the time when such return or settlement should have been made, and ten per centum damages,

and it shall be the duty of the County Auditor to notify immediately the Prosecuting Attorney of such failure or refusal, who shall bring suit at once upon such Treasurer's official bond.

Treasurer failing to pay revenue for county, road, etc., purposes, suit.

SEC. 232. The County Treasurer shall pay over all the revenues collected for county, road and other purposes, and make settlements therefor at the time and in the manner by this act required, and, upon failure or refusal to do so, he and his sureties, on his official bond, shall be held liable to pay the full amount which he shall have paid over, together with interest and ten per centum damages, and such suit, if for State revenue, shall be brought by the Attorney-General, in the name of the State of Indiana, on relation of the Auditor of State, upon the written request of the Auditor of State, and, if for county, road, or any other purpose, it shall be brought by the Prosecuting Attorney, in the name of the State of Indiana, or [on] relation of the County Auditor, upon the written request of the County Auditor, or upon the order of the Board of County Commissioners. And in case of recovery upon such bond, such Attorney-General, or Prosecuting Attorney shall be entitled to a compensation of five per centum upon all sums collected, after judgment for the full amount, interest and ten per centum damages, has been obtained, and also a docket fee of ten dollars, to be taxed as costs against the judgment defendants.

Stated account, prima facie evidence.

SEC. 233. The stated account of the County Treasurer against whom suit is brought, certified by the Auditor of State as truly transcribed from the account current against such Treasurer on the books of said Auditor's office, authenticated by the State seal, shall be *prima facie* evidence against such Treasurer and his sureties.

Books, papers, used in suit.

SEC. 234. In all suits brought against any County Treasurer and his sureties, the books and papers belonging to the Treasurer's office and all books and papers belonging to the Auditor's office, shall, when proved by the oral testimony of the Auditor, be admissible testimony.

Duties of Sheriff as to collecting.

SEC. 235. The Sheriff, or other officer, who shall collect any money from any delinquent County Treasurer or his sureties, shall, within ten days after the assessment and collection thereof, pay into the County Treasury such portion thereof as shall belong to the county, and within thirty days after such collection, shall pay into the State Treasury the portion belonging to the State, retaining the same traveling fees allowed by law to County Treasurers, or he shall pay the same over in such other manner as the Auditor of State may direct.

Revenue on dogs.

SEC. 236. The revenue received from the tax on dogs in each township shall be set apart by the County Auditor at such annual settlement, and the same shall be paid over by the County Treasurer to the proper Township Trustee. The sums so collected and received in each township are hereby declared to be a fund for the payment of damages sustained by the owners of sheep maimed or killed by dogs within such township; and each Township Trustee is directed and required to hold the same for such purposes: *Provided, however*, That when it shall so happen on the first Monday of March in each year, in any township, that the said fund shall accumulate to an amount exceeding fifty dollars over and above orders drawn against the same, then the surplus over said sum of fifty dollars shall be expended by such Trustee for the use of the school revenue of the township.

Treasurer overpaying Board.

SEC. 237. Whenever it shall appear to the Board doing county business in any of the counties of the State, by clear and sufficient proof, that by reason of erroneous charges in the tax duplicate, or from any other cause, the Treasurer of such county has paid and accounted to said Board for more money than was justly due from him on account of county revenue, said Board doing county business shall direct the Auditor to credit said Treasurer with the sum or sums thus improperly paid, and order the same to be refunded out of the county treasury.

County Treasurer overpaying State Treasurer.

SEC. 238. Whenever similar improper or erroneous payments have been made by any County Treasurer to the State Treasurer, the Board doing county business shall direct the Auditor to certify said improper or erroneous payments to the Auditor of State, under his seal of office, who shall audit and allow the same as a claim against the Treasurer, and the Treasurer shall pay the same out [of] any moneys not otherwise appropriated.

Provisions apply to all County Treasurers.

SEC. 239. The provisions of the preceding sections shall extend to persons who have been, as well as those who are now, and shall hereafter be, County Treasurers.

Delinquencies omitted from duplicates.

SEC. 240. Annually, in the month of November, before the delinquencies of a former year or years are carried upon the current year's duplicate, it shall be the duty of the County Auditor and Treasurer to review and carefully examine the list of delinquencies; all such delinquencies as by reason of removal from the State, leaving no property, or dying, leaving no property, and all delinquencies which in the judgment of said Auditor and Treasurer, from any other cause, there is no reason-

able probability of being collected, shall be omitted from the current year's duplicate.

Validity of assessment not affected.

SEC. 241. Any failure to deliver the Treasurer's or Assessor's books within the time required by this act, or to make any official certificate within the time required by this act, shall in no way affect the validity of the assessment and levy or collection of taxes, but in case of such failure, the assessment and levy of taxes and the proceedings to collect taxes, shall be held to be as valid and building [binding] as if said books had been delivered at or within the time required by law.

Auditor of State, forms and instructions.

SEC. 242. It shall be the duty of the Auditor of State to make out and forward to each County Auditor, from time to time, for the use of such Auditor and other officers, suitable forms and instructions, and all such instructions shall be strictly complied with by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt, as to the true intent and meaning of the provisions of this act.

Uncollected tax added.

SEC. 243. If the tax on any property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceedings or other cause, or has not heretofore been assessed, the same shall be assessed as in this act provided, and the amount of such tax which such property should have paid, shall be added to the tax on such property for the next succeeding year.

Uniform system book-keeping.

SEC. 244. It shall be the duty of the Auditor of State to order and enforce a correct, and, as far as practicable, uniform system of book-keeping by the County Treasurers and Auditors, so as to afford a suitable check upon their mutual action and insure the thorough supervision and safety of State, county and other funds.

Copies of act, distribution.

SEC. 245. The Auditor of State shall, from time to time, whenever he shall find it necessary, cause to be printed, at the expense of the State, a sufficient number of copies of this act to furnish one copy to each Township Assessor, County Assessor, Treasurer, Auditor and Commissioner within this State, and shall transmit to each County Auditor a sufficient number for his county. Every County Auditor receiving such copies shall immediately distribute the same to the persons entitled thereto. The Auditor of State shall also furnish the several Township Assessors, County Assessors, Auditors and Treasurers, with all such forms and instructions as he may wish them to pursue in the performance of the duties required by this act. And in preparing such forms for the returns to be made by County

Forms and instructions.

Limit of compromise. Cities and towns may compromise.

SEC. 252. The privilege to compromise and pay, permitted in the foregoing section, shall not extend beyond the first day of April, 1892, and the provisions of said sections shall apply to municipal taxes in cities and incorporated towns, and in cities the Treasurer, Clerk and Chairman of the Finance Committee shall perform the same duties as are now enjoined in said sections, and the Mayor shall perform the duties required of Auditor of State, and in incorporated towns, the Board of Trustees shall have full power to perform the duties in said sections enjoined upon said officers as aforesaid.

Former liens and penalties.

SEC. 253. All liens for taxes, and all penalties, and any right to redeem from tax sales, accrued under former laws, and existing at the time of the passage of this act are hereby continued in force and may be enforced under the provisions of this act and all suits and proceedings now pending for collection of taxes under former and existing laws, shall be continued to a final termination, the same as if this act had not been passed.

Provisions of this law to apply to cities.

SEC. 254. Cities shall be governed by the provisions of this law, in regard to the matters embraced therein, so far as the same are applicable, and the duties required by the terms of this act to be done by the county officers, shall be performed by the corresponding officers of each city in regard to the assessment and collection of taxes, and all matters pertaining thereto: *Provided*, That all city taxes shall be paid on or before the third Monday in April of each year, unless the Common Council shall, by ordinance or resolution, determine otherwise, as provided by law: *And, provided further*, That the office of City Assessor and the City Board of Equalization are hereby abolished and the assessment of real and personal property, as made and returned by the Township Assessor, shall serve as the assessment for city purposes, and the proper city officers shall have access to the Assessor's books and to the tax duplicates in the County Auditor's office, for the purpose of transcribing therefrom a list of the property assessed, as the same shall have been equalized by the Board of Review and the State Board of Tax Commissioners.

Office City Assessor and Board of Equalization abolished.

False swearing.

SEC. 255. Any person who, under any of the proceedings required or permitted by this act, shall wilfully swear falsely, shall be guilty of perjury and subject to all its penalties.

False assessment, penalty.

SEC. 256. Any Assessor or member of a Board of Review, or of a Board of Tax Commissioners, who shall wilfully assess any property at more or less that [than] what he believes to be its true cash value, as the

same is defined in this act, shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not more than one year, or both, in the discretion of the Court.

Failure to perform duty, penalty.

SEC. 257. Any officer who shall wilfully neglect or refuse to perform any of the duties imposed on him by this act, when no other provision is made herein, be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding two hundred dollars, or both, in the discretion of the Court, and shall be liable to any person injured thereby to the full extent of the damage sustained.

Forms.

SEC. 258. The State Board of Tax Commissioners is hereby authorized to prepare for the use of Assessors a more complete and perfect form of "schedule of property" than that set out in section 53 of this act, with a view of securing a full assessment of all the property of the State; and all County Auditors are directed to use such form, in preparing blanks for the use of Assessors. Said Board is also authorized to prepare in like manner a new form of tax receipt for the use of County Treasurers, which form of receipt, when so prepared, shall be used by all County Treasurers: *Provided*, That for the assessment and collection of taxes for the year 1891, the forms heretofore in use may be continued as far as practicable, subject, however, to all provisions of this act.

Laws repealed.

SEC. 259. All laws and parts of laws within the purview of this act, including "An act to render uniform the assessments of personal property in the several townships of the different counties," approved March 8, 1889, are hereby repealed.

Emergency.

SEC. 260. Inasmuch as an emergency exists, this act shall take effect and be in force from and after its passage.

MASON J. NIBLACK,
Speaker of the House of Representatives.

ATTEST: THOS. J. NEWKIRK,
Principal Clerk of the House of Representatives.

IRA J. CHASE,
President of the Senate.

Approved March 6, 1891.

ALVIN P. HOVEY,
Governor.

CERTIFICATE.

STATE OF INDIANA,
OFFICE OF THE SECRETARY OF STATE. } ss:

I, CLAUDE MATTHEWS, Secretary of State of the State of Indiana, do hereby certify that foregoing is a full, true and complete copy of Enrolled House Bill No. 487, as filed in the office of the Secretary of State of the State of Indiana on the 7th day of March, 1891.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the State of Indiana, [SEAL] at the city of Indianapolis, this 11th day of March, A. D., 1891.

CLAUDE MATTHEWS,
Secretary of State.

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